



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **05.12.2017**

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD)No.632 of 2015
and
M.P. (MD)No.2 of 2015

Tamil Nadu Public Service Commission,
Through its Secretary,
Greams Road, Chennai,
Now functioning at
Frazer Bridge Road, V.O.C.Nagar,
Chennai-600 003.

: Appellant

Vs.

K.Packialakshmi

: Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, praying to set aside the order dated 12.12.2013 made in W.P.(MD)No.2860 of 2013.

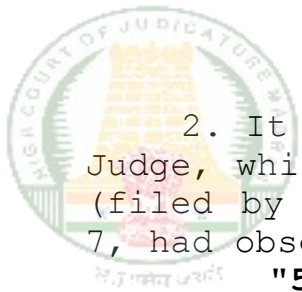
Prayer in WP(MD). 2860/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondent herein to consider the petitioner for appointment to the non interview post in the Combined Subordinate Services Examination I 2009-2011 conducted by Tamil Nadu Public Service Commission pursuant to the notice published on 30.12.2010 under the MBC/DC-Female-PSTM category and appoint her to the said post and pass such further or other orders.

For Appellant : Mr.K.K.Senthil
For Respondent : Mr.D.Pandiaraj,
For Mr.AL.Kannan

JUDGMENT

[Judgment of the Court was delivered by **M.VENUGOPAL, J.**]
<https://hcservices.ecourts.gov.in/hcservices/>
heard the Learned Counsel for the Appellant/Service Commission
and the Learned Counsel for the Respondent.



2. It comes to be known that on 12.12.2013, the Learned Single Judge, while passing the impugned order in W.P.(MD)No.2860 of 2013 (filed by the Respondent/Writ Petitioner), at Paragraph Nos.5 to 7, had observed the following:

"5. The fact that the petitioner has secured 213 marks in the written examination is not in dispute. Admittedly, she belongs to Most Backward Class community. Now, the question, which would arise for consideration, is whether the petitioner could be considered in the category of MBC/DC-Female-PSTM. It is seen that the petitioner has produced records to show that she has studied in Tamil, both in the school as well as in the college. It is also not in dispute that she has studied in Tamil Medium. However, it is only the petitioner has not marked the column regarding the medium of study of degree. Such a mistake will not take away her right to be considered under the appropriate category.

6. Considering the above said facts, this Court is of the considered view that it is a fit case, where the petitioner will have to be permitted to produce the records before the respondent, if she is otherwise qualified.

7. Accordingly, the Writ Petition is disposed of with a direction to the petitioner to produce the records before the respondent, within a period of two weeks from the date of receipt of a copy of this order. If the respondent is satisfied that the petitioner is studied the degree in Tamil and she will have to be considered under the category of MBC/DC-Female-PSTM, then, she will have to be given the posting, based upon the same, if she is otherwise eligible. The said exercise has to be completed by the respondent, within a period of eight weeks from the date of receipt of a copy of this order."

and disposed of the Writ Petition.

3. Questioning the order passed by the Learned Single Judge in W.P.(MD)No.2860 of 2013, dated 12.12.2013, the Appellant/Service Commission has filed the instant Writ Appeal, by taking a plea that the Learned Single Judge had failed to consider the fact that the Tamil Nadu Public Service Commission, in its Advertisement No.258, dated 30.12.2010 and Supplemental Notification issued in Advertisement Nos.265 and 280, had invited applications for direct recruitment to the posts included in CSSE-I 2009-2011 and 3475 vacancies in Oral Test posts and 3171 vacancies in Non-Oral Test posts were announced in the said Notifications. In General Information of the Notification/advertisement, it was mentioned as follows:-

"(a) under para 3A(ii), it had been announced that 20% of all vacancies in direct recruitment will be filled on preferential basis by persons studied in



Tamil Medium w.r. to G.O.Ms.No.145 P & AR(S) Department, dated 30.09.2010.

(b) under para 3A(iii) it had been announced that "Candidates who claim reservation w.r. to orders issued in the above Government Order should enclose evidence in support of their claim.

Applications submitted without evidence will not be considered for the above said reservation."

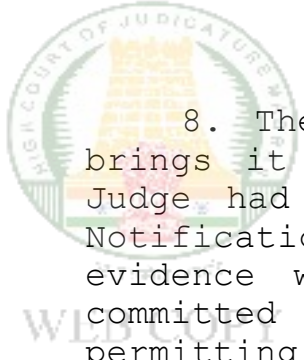
4. The Learned Counsel for the Appellant/Service Commission points out that in Paragraph No.10 of the Notification, among other things, it is mentioned as under:

"In addition to the above said enclosures evidence for PSTM should be enclosed if the candidates claim reservation for PSTM."

5. The Learned Counsel for the Appellant/Service Commission emphatically submits that when the Respondent/Writ Petitioner had not produced the requisite evidence, as specified in the Notification of the Tamil Nadu Public Service Commission/Advertisement No.258, dated 30.12.2010, then she is not entitled to be considered under the reserved category and on this score alone, the Writ Petition should have been dismissed by the Learned Single Judge.

6. The Learned Counsel for the Appellant/Service Commission projects an argument that when the Respondent/Writ Petitioner, while applying before the Commission for the Recruitment, had failed to enclose the evidence for having studied the prescribed qualification in Tamil Medium or failed to give an undertaking stating to have studied the prescribed qualification in Tamil medium, the Appellant is well within its right in non-considering the Respondent/Writ Petitioner under PSTM category, which aspect was not properly appreciated by the Learned Single Judge at the time of disposal of the main Writ Petition.

7. The Learned Counsel for the Appellant/Service Commission draws the attention of this Court that the Respondent/Writ Petitioner had secured only 213 marks in the written examination and that she was not summoned for counseling to Non-OT posts and as the cut-off marks for MBC/DC(W) PSTM category, for admission to counseling to the Non-OT posts was 210, the Respondent/Writ Petitioner had filed the Writ Petition and the same was disposed of by issuance of direction that the candidature of the Respondent/Writ Petitioner be considered under PSTM category. As such, it was contrary to the Notification and, therefore, the impugned order of the Learned Single Judge in W.P.(MD)No.2860 of 2013, dated 12.12.2013 is liable to be set aside, in the interest



8. The Learned Counsel for the Appellant/Service Commission brings it to the notice of this Court that the Learned Single Judge had not considered the specific clause mentioned in the Notification which mentions that applications submitted without evidence will not be considered for PSTM reservation and had committed an error in disposing of the Writ Petition, by permitting the Respondent/Writ Petitioner to produce the records before the Appellant/Service Commission, within a period of two weeks from the date of receipt of copy of the order.

9. The Learned Counsel for the Appellant/Service Commission proceeds to point out that the Respondent/Writ Petitioner had obtained the PSTM certificates only on 17.12.2013 and 29.12.2013 from the Additional Director of Madurai Kamaraj University and from the Headmaster of Government Higher Secondary School, Palamedu for UG Degree, S.S.L.C., and H.S.C., respectively and this shows that she does not have the evidence to point out that she studied in Tamil Medium while at the time of submitting her application before the Commission. When that be the factual position, as per the Notification, the Respondent/Writ Petitioner is not entitled to seek any relief in the Writ Petition, since there is no evidence with her on the date of making an application, which fact was not appreciated by the Learned Single judge, while disposing of the Writ Petition.

10. The Learned Counsel for the Appellant/Service Commission submits that large number of candidates, who had not produced PSTM Certificates along with applications, were considered only as Non-PSTM candidates and they were admitted for counseling only as if they were otherwise qualified and within the zone of selection. If they had not reached the zone of selection under Non-PSTM category, they were not admitted for Oral Test/Counseling.

11. The Learned Counsel for the Appellant/Service Commission refers to an order dated **13.12.2012 in W.P.(MD)No.15253 of 2012** between **L.Devi and the Tamil Nadu Public Service Commission**, whereby and whereunder, at Paragraph Nos.5 and 6, it is observed as under:

"5. But, unfortunately, the petitioner obtained a certificate from the University only on 19.11.2012, to the effect that she had studied in Tamil medium. Therefore, her application was not considered by the Commission under the category of "PSTM".

6. It is relevant to note that the last date for submission of application forms for selection was 09.02.2011 and the interviews were held from June, 2012 to July, 2012. The brochure and the notification issued by the Tamil Nadu Public Service Commission make it clear that persons, who claim to come under the quota



"PSTM", should produce the relevant certificate, at the time of interview, apart from sending a copy of the certificate along with the application forms. The fact that the petitioner secured the certificate from the University only on 19.11.2012 confirms the fact that she did not send a copy of the certificate along with the application form and she did not also produce the copy, at the time of interview. Therefore, the respondent was handicapped in treating the petitioner as a candidate belonging to the Tamil medium quota. Therefore, the Writ Petition is dismissed."

12. Lastly, it is a plea of the Appellant/Service Commission that the impugned order of the learned Single Judge in W.P.(MD) No.2860 of 2013 runs contrary to the well settled legal principle that the instructions, etc., to candidates as well as the Information Brochure of the Tamil Nadu Public Service Commission, and the terms and conditions of instructions, etc., to candidates and the Information Brochure have the force of Law and have to be strictly complied with and no relaxation/modification can be made by a Court of Law, in exercise of power under Article 226 of the Constitution of India. In short, it is the contention of the Appellant/Service Commission that the Respondent/Wit Petitioner, who had not fulfilled her obligation, as per the instructions issued in the Notification, is not entitled to any relief, which aspect was left to be considered by the Learned Single Judge, while disposing of the Writ Petition.

13. The Learned Counsel for the Appellant/Service Commission, seeks-in-aid of the Division Bench Judgment of this Court in **W.A.408 of 2014, dated 17.11.2014, between L.Udhayakumar Vs. The State of Tamil Nadu**, whereby and whereunder, at Paragraph Nos.6 and 7, it is observed as under:

"6. Clause 4(c) clearly provides that a candidate, who claims PSTM reservation, has to enclose evidence in support of the claim. There is no confusion as the language is unambiguous and clear. If it is not provided in Clause 15 of the instructions, as pleaded by the appellant/petitioner, the appellant/petitioner cannot take a plea that the appellant was mislead under OMR form in the column, where the petitioner is required to mention in the box about the documents to be enclosed. There is a clear column for other social records, if any specified in the advertisement/notification. As aforesaid, the advertisement/notification clearly provides for enclosing evidence in support of the claim for PSTM reservation. Thus, the contention of the learned counsel for the appellant/petitioner that even the OMR



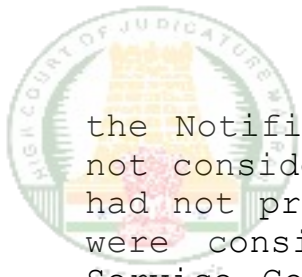
form does not disclose the same does not merit acceptance.

7. It is a trite law that the condition prescribed in any of the relevant documents, I.e., notification/advertisement, instructions and forms, are treated as part of necessary information for the purpose of enabling a candidate to read, understand and apply accordingly. There is no inconsistency in the observation and findings recorded by the learned Single Judge in the order dated 28.02.2014."

14. Admittedly, Paragraph No.10 of the Notification of the Appellant/Service Commission points out *inter alia* that in addition to the above said enclosures, evidence for PSTM should be enclosed, if the candidates claim reservation for PSTM and admittedly, when the Respondent/Writ Petitioner had not produced the same, then, she is not entitled to be considered under PSTM category. Ordinarily, the instructions/information contain in the Brochure of the Appellant/Service Commission, terms and conditions of the instructions, etc., are to be adhered to by the candidates in true letter and spirit. When the Respondent/Writ Petitioner had not enclosed necessary documentary evidence, in support of her claim of reservation under PSTM category, then it is not open to her to turn around and make a claim that she should have been considered under PSTM category, which is against the Notification itself. Another aspect, which was lost sight of by the Learned Single Judge at the time of passing the impugned order dated 12.12.2013 in W.P.(MD)No.2860 of 2013, is that the Respondent/Writ Petitioner had secured the PSTM Certificates only on 17.12.2013 and 29.12.2013 from the Additional Director of Madurai Kamaraj University and from the Headmaster of Government Higher Secondary School, Palamedu for UG Degree, S.S.L.C., and H.S.C., respectively. From this, it is lucidly quite clear that she was not in possession of requisite evidence to point out that she studied in Tamil Medium while at the time submission of her application before the Appellant/Service Commission. On this score also, the Respondent/Writ Petitioner fails.

15. It is to be borne in mind that the Respondent/Writ Petitioner had secured only 213 marks in the written examination and she was not summoned for counseling to Non-OT posts. Since the cut-off marks for MBC/DC(W) category, for admission to counseling to Non-OT posts was 228 and since the Respondent/Writ Petitioner had secured only 213 marks in the written examination, she was not summoned for counseling to Non-OT posts and as such, she was not selected by the Appellant/Service Commission.

16. In the instant case on hand, the Respondent/Writ Petitioner had not even furnished an undertaking that she had studied the prescribed qualification in Tamil Medium, while sending her application for direct recruitment to the posts included in CSSE-I,2009-2011, with reference to Para-3A(iii) of



the Notification dated 30.12.2010. Therefore, her application was not considered under PSTM Category. When the other candidates, who had not produced PSTM certificates together with the applications, were considered only as Non-PSTM candidates by the Appellant/Service Commission and they were admitted for counseling only if they were otherwise qualified and within the zone of selection, the Respondent/Writ Petitioner cannot take a contra plea in this regard. Because of the absence of the requisite PSTM Certificate, the Respondent/Writ Petitioner was not treated as a candidate belonging to PSTM Category by the Appellant/Service Commission and hence, the view taken by the Appellant/Service Commission, in the considered opinion of this Court, is a correct one.

17. On the other hand, the contra views taken by the Learned Single Judge, while disposing of the Writ Petition in W.P.(MD) No.2860 of 2013, dated 12.12.2013, *inter alia* to the effect that it is also not in dispute that she had studied in Tamil Medium, however, it is only the Respondent/Writ Petitioner who had not marked the Column regarding the Medium of study of Degree and such a mistake will not take away her right to be considered under the appropriate category, are clearly unsustainable in the eye of law.

18. Looking at from that angle, this Court is inclined to interfere with the impugned order of the Learned Single Judge dated 12.12.2013 in W.P.(MD)No.2860 of 2013 and set aside the same, in furtherance of substantial cause of justice. Resultantly, the Writ Appeal succeeds.

19. In fine, the Writ Appeal is allowed and the impugned order dated 12.12.2013 of the Learned Single Judge made in W.P.(MD) No.2860 of 2013 is, hereby, set aside by this Court for the reasons assigned in this Writ Appeal. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C.Nagar,
Chennai-3.

+ 1 cc TO Mr.AL.Kannan , Advocate in SR No. 91286
+ 1 cc TO Mr.K.K.Senthil , Advocate in SR No. 91504

SML

AE/MR KKR/SAR3/26.12.2017/7P/4C