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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.02.2017

DELIVERED ON: 10.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) Nos. 5, 20, 82 and 131 of 2017

and

C.M.P. (MD) .No.105 of 2017 in W.A. (MD) .No.5 of 2017

and

C.M.P. (MD) .Nos.267 and 268 of 2017 in W.A. (MD) .No.20 of 2017

and

C.M.P. (MD) .No.1296 of 2017 in W.A. (MD) .No.131 of 2017

W.A. (MD) .No.5 of 2017

- 1.A.Solaimalai
- 2.M.Radha
- 3.R.Pechiammal
- 4.T.Nathiya
- 5.M.Chitra
- 6.K.Uma Maheswari
- 7.M.Shanmugam Priyan
- 8.M.Usha
- 9.N.Lakshmi
- 10.M.Rama Lakshmi
- 11.K.Ambika
- 12.J.Sivagami

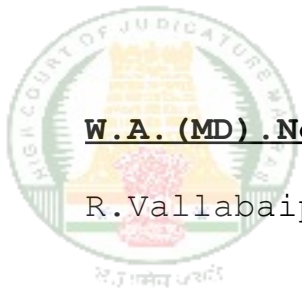
.. Appellants
Petitioners

Vs.

- 1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town,
Chennai -3.

- 2.The Director,
Directorate of Technical Education (DoTE),
Sardar Patel Road,
Guindy,
Chennai - 600 025.

.. Respondents /
Respondents

**W.A. (MD) .No. 20 of 2017**

R.Vallabaipadel

.. Appellant
Petitioner

WEB COPY

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town,
Chennai -3.

2.The Chairman,
Board of Examinations,
Department of Technical Education,
Chennai.

.. Respondents /
Respondents**W.A. (MD) .No.82 of 2017**

M.Ranjanam

.. Appellant
Petitioner

Vs.

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

.. Respondent /
Respondent**W.A. (MD) .No.131 of 2017**

R.Muthuselvi

.. Appellant
Petitioner

Vs.

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town,
Chennai -3.

.. Respondents /
Respondents



Writ Appeals have been filed under Clause 15 of the Letters Patent, against the order, dated 07.10.2016, made in W.P.(MD). Nos.20426, 22743, 21057 and 21468 of 2015 by a learned Single Judge of this Court.

Prayer in WP(MD). 20426/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, to call for the records pertaining to the impugned order dated 28.10.2015, containing the register numbers of the candidates who have been admitted to the counselling, on the file of the Respondent No.1, and quash the same as illegal to the extent of non inclusion of the petitioners in the same and consequently to direct the respondent No.1 to select and appoint the petitioners in the post of Typist included in Group-IV Services for the years 2013-14 and 2014-2015, within the time stipulated by this Hon'ble Court.

Prayer in WP(MD). 22743/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS directing the 1st respondent to allow the petitioner to participate in the counseling schedule to be held from 16.12.2015 onwards for recruitment to the post of Typist taking into account of Technical Qualification possessed by the petitioner on the last date of submission of application i.e. on 12.11.2014 and consequentially to direct the 1st respondent to consider the petitioner for appointment to the said post on the basis of ranking assigned to the petitioner in the written Examination within the period stipulated by this Hon'ble Court.

Prayer in WP(MD). 21057/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to cancel the non selection of the petitioner and to select and appoint the petitioner as a Typist.

Prayer in WP(MD). 21468/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent to select and appoint the petitioner (Reg.No. 100412146) to the post of Typist based on the marks and on merits as per overall Rank 697 and Communal Rank 145 for the post of Typist in MBC category based on the selection conducted as per Notification No. 401 of 2014 dated 14.10.2014 issued by the respondent and to pass such further or other orders as this Hon'ble Court.



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For appellants in
W.A. (MD).No.5/2017

: Mr.T.Lajapathi Roy

For appellant in
W.A. (MD).No.20/2017

:Mr.Ajmal Khan,
Senior Counsel for
M/s.Ajmal Associates

For appellant in
W.A. (MD).No.82/2017

: Mr.V.Panneerselvam

For appellant in
W.A. (MD).No.131/2017

: Mr.G.Sankaran

For 1st respondent in all
the petitions

: Mr.K.Chellapandian,
Senior Counsel for
Mr.K.K.Senthil

For 2nd respondent in
all the petitions

: Mr.N.S.Karthikeyan,
Addl. Government Pleader

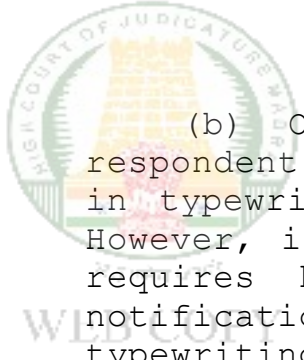
COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

All these appeals arise out of a common order passed in W.P. (MD).Nos.20426, 22743, 21057 and 21468 of 2015 along with the other batch of writ petitions by a learned Single Judge of this Court, whereby and whereunder the learned Single Judge has dismissed all the writ petitions holding that all the appellants herein not eligible to the post of Assistant, since they did not possess technical qualification on the date of notification dated 14.10.2014.

2.The brief facts which are necessary to decide these appeals are as follows;

(a) The first respondent herein viz., The Tamil Nadu Public Service Commission issued a notification in advertisement No.401/2014, dated 14.10.2014 calling for applications for recruitment to the post of Typist Group IV. As per the said notification, the required qualification to the post of Typist was SSLC pass or its equivalent and Senior Grade in typewriting both in Tamil and English or Senior Grade in one language and Lower Grade in another language. The appellants herein have applied for the same. They were issued with the hall tickets with the individual register numbers and written examination was conducted on 21.12.2014 and after taking part in the said examination, all the appellants became successful candidates in the written examinations. Hence, they were issued with individual call letters for certificate verification, as per their rank position.



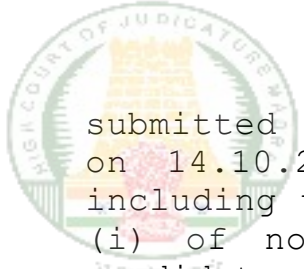
(b) On the date of certificate verification, the first respondent raised a doubt over the acquisition of the certificates in typewriting after the date of notification dated 14.10.2014. However, it was explained by the appellants that the notification requires basic qualification of SSLC prior to the date of notification. With regard to the technical qualification of typewriting, it was not indicated so and even then, before the last date of notification they obtained the certificate and applied for the examination. After verification of the certificates, they were informed that they would be called for counselling. Thereafter, the first respondent issued the impugned order containing the register numbers of the candidates called for counselling for recruitment to the post of Typist, in which the register numbers of the appellants were missing. When the appellants approached the first respondent and enquired the same, they were informed that since the typewriting certificate was obtained by the appellants beyond the date of notification dated 14.10.2014, they were not considered for selection. But, the appellants explained that the result of the typewriting examination was published prior to the date of notification and only the certificate has been received after the date of notification and thereby the appellants were qualified in typewriting as on the date of notification dated 14.10.2014. Even then, the respondents did not consider their case.

(c) In the meantime, one of the candidates viz., E.Ezilarasi filed W.P.No.22934 of 2015 before the Principal Seat of this Court, in which an interim order was passed directing the respondent to permit her to participate in the counselling. Hence, these appellants filed the writ petitions seeking to allow them to participate in the counselling scheduled to be held from 16.12.2015 onwards for recruitment to the post of Typist taking into account the Technical Qualification possessed by the appellants and consequently direct the first respondent to consider the appellants for appointment to the post of Typist as per their ranking in the written examination. This Court, by interim order dated 02.12.2015, allowed them to participate in the counselling as per their rank. Aggrieved over the interim order, the first respondent / TNPSC has filed writ appeals in W.A.(MD). Nos.1396 to 1402 of 2015. But, all the writ appeals filed by the respondents were dismissed by the Division Bench of this Court confirming the order of the learned Single Judge. Thereafter, the appellants were also participated in the counselling.

(d) The learned Single Judge, after hearing both sides, has dismissed all the writ petitions holding that the appellants ought to have possessed technical qualification on the date of notification ie. On 14.10.2014. Aggrieved over the same, the appellants have filed these appeals.

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3. The learned senior counsel appearing for the appellants

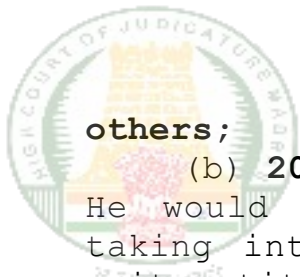


submitted that the first respondent herein issued a notification on 14.10.2014 calling for the applications for various posts including the post of Typist Group IV, in which the serial No.3(b) (i) of notification prescribes about the qualification of the candidates applying for the post of Typist. As per Clause 3(b) (ii), as on the date of 14.10.2014 the candidate should possess minimum educational qualification viz., SSLC pass or its equivalent or higher education. So far as the technical qualification is concerned, it was mentioned in clause 3(b)(ii) stated that the candidate must have passed the Government Technical Examination in Typewriting (i) by Higher /Senior Grade in Tamil and English or (ii) by Higher / Senior Grade in Tamil and Lower / Junior Grade in English or (iii) By Higher / Senior Grade in English and Lower / Junior Grade in Tamil. As far as the appellants are concerned, as on the date of notification 14.10.2014, they possessed the required educational qualification. So far as the technical qualification is concerned, all the appellants took their examination in the month of August 2014, which is much earlier to the date of notification dated 14.10.2014. The last date for submitting the application was on 12.11.2014. In between these two dates viz., the date of notification and last date for submission of application, the certificates for technical qualification was issued to the appellants on 24.10.2014. They have also submitted their application much earlier to the last date for submission of the application i.e., on 12.11.2014. Thus, according to the learned senior counsel for the appellants, when no specific cut of date was fixed for technical qualifications, the last date of submitting an application alone should be taken into consideration and the appellants ought to have been appointed as per their rank.

4. The learned senior counsel for the appellants, inviting the attention of this Court to category 12C of the Tamil Nadu Ministerial Service Rules, further submitted that the Typist Group IV is a service governed by the Tamil Nadu Ministerial Service Rules in the said category. Further, by inviting the attention of this Court to Rule 29 of the Tamil Nadu Ministerial Service Rules which deals with the minimum educational qualification it is submitted that the said Rule provides only the minimum educational qualification I.e., SSLC pass on the date of notification dated 14.10.2014. He would further submit that Rule 30 of the Tamil Nadu Ministerial Service Rule which provides for special qualification for Typists as per annexure III, does not prescribe for possession of qualification on the date of notification and it is silent. When that being the position, the order passed by the learned Single Judge holding that as on the date of notification, the appellants did not possess Technical qualification has to be set aside. In this regard, the learned senior counsel for the

<https://hccservices.ecourts.gov.in/hccservices> and on the following decisions :

(a) **(2007) 4 SCC 54 (Ashok Kumar Sonkar Vs. Union of India and**



others;

(b) 2016 (6) CTC 583 (TNPSC Vs. N.Santhi)

He would further submit that the learned Single Judge without taking into consideration of the above aspect has dismissed the writ petitions. Thus, he prayed to set aside the order passed by the learned Single Judge and to direct the first respondent to appoint the appellants in the post of Typists as per their rank in the written examination.

5. Countering the above submissions, the learned senior counsel appearing for the respondents submitted that the cut of date mentioned in serial No.3(b)(i) for educational qualification would apply for the technical qualification mentioned in serial No.3(b)(ii) also. So far as the present case is concerned, on the date of notification viz., 14.10.2014, though the appellants have got minimum educational qualification, they did not possess the technical qualification. They took their typewriting examination in the month of August 2014 but on the date of notifications results were not announced and they got the certificate only on 24.10.2014. Since they did not possess the technical qualification as on the date of notification dated 14.10.2014, they are not eligible to be considered for appointment to the post of Typist.

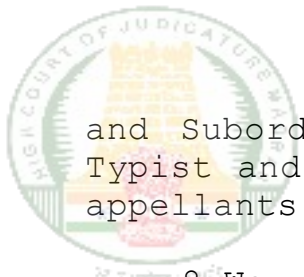
6. In this regard, the learned senior counsel for the respondents has also invited the attention of this Court to Rule 12(b)(iv) of the Tamil Nadu State and Subordinate Service Rules, which reads that, notwithstanding anything contained in the Special Rules, such a person shall also possess the qualifications including experience prescribed for a post, on the date of notification of the vacancy. By relying upon the said provision, the learned senior counsel for the respondents submitted that the said Rule clearly says that as on the date of notification, the candidate should possess necessary qualification. The learned senior counsel appearing for the respondents would further submit that even assuming that no date was fixed for technical qualification in the notification, Rule 12(b)(iv) of Tamil Nadu State and Subordinate Service Rules, makes it clear that on the date of notification, the candidate should possess educational qualification as well as technical qualification. In this regard, he has also relied upon the following judgments:

(a) 1997 (4) SCC 18 (Ashok Kumar Sharma and others Vs. Chander Shekhar and another)

(b) (2013) 11 SCC 58 (Rakesh Kumar Sharma Vs. State)

Thus, he prayed for dismissal of these appeals.

By way of reply, the learned senior counsel for the appellants submitted that Rule 12(b)(iv) of the Tamil Nadu State



and Subordinate Service Rules is not applicable to the post of Typist and therefore, the same would not apply to the case of the appellants.

8. We have given our anxious considerations to the rival submissions made on either side and also perused the entire materials available on record.

9. It is the main submission of the learned senior counsel for the appellants that the cut of date mentioned in serial No.3(b)(i) of the notification would apply only for educational qualification and no cut off date was fixed for serial No.3(b)(ii) of the notification with regard to the technical qualification and therefore, the last date fixed for submission of the application i.e., 12.11.2014 should be taken as the cut of date for the technical qualification. According to the learned senior counsel for the respondents, the cut of date mentioned in serial No.3(b)(i) of the notification would apply to serial No.3(b)(ii) also. In view of the submission and counter submission made on either side, we are of the opinion that it would be appropriate to extract the relevant portion from the notification:

"3(b)(i) Educational qualification (common for all post) as on 14.10.2014:

Must possess minimum General Educational Qualification viz., must have passed SSLC public examination or its equivalent with eligibility for admission to Higher Secondary courses of studies or to college course of studies.

3(b)(ii) Technical Qualification:

(a) For Typist:

Must have passed the Government Technical Examination in Typewriting (i) By higher / senior grade in Tamil and English or (ii) By higher / senior grade in Tamil and Lower / Junior Grade in English or (iii) By higher / senior grade in English and Lower / Junior Grade in Tamil."

10. On a perusal of the notification, we find that though a cut off date was fixed for educational qualification, no cut off date was fixed for technical qualification. But, it is the assertive submission of the learned counsel for the respondents that the date mentioned in the educational qualification will apply for both. But, we are not inclined to accept the said submission of the learned senior counsel for the respondents. If a date is fixed for educational qualification as well as for technical qualification, the cut of date should be certain and it should not be uncertain. In this case, the first respondent has failed to clearly specify that the said cut off date would apply



for both the educational qualification as well as the technical qualification.

11. Though the learned senior counsel for the respondents, by relying on Rule 12(b)(iv) of the Tamil Nadu State and Subordinate Service Rules submitted that the applicant should possess qualifications on the date of notification of the vacancy, this Court is of the view that the same is not applicable to the case of the appellants as the notification does not specify as to what is the relevant date on which the applicant should have acquired a technical qualification. The relevant Rule applicable to the post of Typist is Rule 30 of the Tamil Nadu Ministerial Service Rules and the same reads as follows:

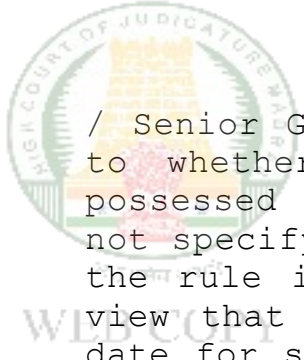
"Rule 30. Special Qualifications :

(a) No candidate shall be eligible for appointment to the service in the categories and posts specified in column (1) of Annexure-III by the method specified in the corresponding entry in column (2) unless he possesses the qualifications specified in the corresponding entry in column (3) thereof."

As per Annexure III, the qualification for the post of typist is mentioned as follows;

17. Typists including Machinists in the Treasuries and Accounts Department	Direct recruitment or recruitment by transfer	Must have passed the Government Technical Examination in Typewriting- (i) by the Higher Grade in Tamil and English; or (ii) by the Higher Grade in Tamil and Lower Grade in English; or (iii) by the higher Grade in English and Lower Grade in Tamil; Provided that candidates with the qualifications referred in item (ii) above shall be recruited only if candidates with the qualifications referred to in item (i) above, are not available. Provided further that candidates with the qualifications referred to in item (iii) above, shall be recruited only if candidates with the qualifications referred to in items (i) and (ii) above, are not available.
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12. A reading of the above said Rule and Annexure III makes it clear that for the post of Typist, the applicant must have passed the Government Technical Examination in Typewriting by the Higher



/ Senior Grade in Tamil and English. But, the Rule is silent as to whether the said technical qualification should have been possessed as on date of notification. Since the notification does not specify the cut off date for technical qualification and since the rule is also silent in this regard, this Court is of the view that the benefit should go to the applicants and the last date for submitting the application should be taken as the cut of date for acquiring the technical qualification.

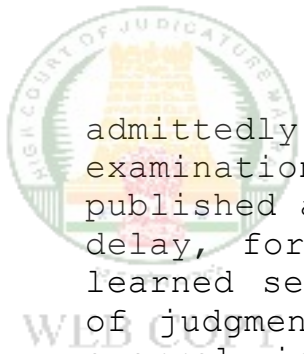
13. In this regard, a reference could be placed to a recent decision of a Division Bench of this Court in **2016(6) SCC 583 (TNPSC Vs. N.Santhi)** wherein at paragraph Nos.18 to 20 the Division Bench has held as follows;

"18.It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the application, unless of course the Notification calling for Application itself prescribes such date. In the case on hand, no such date was prescribed, but for the educational qualification. Therefore, the last date for submission of application has to be construed as the prescribed date for possession of requisite qualification.

19.It is a settled proposition of law that the Selection process commences on the date when the Applications are invited and any person eligible on the last date of submission of the Application has a right to be considered against the said vacancy provided he fulfils the requisite qualification. Therefore, it is clear that the eligibility has to be considered only on the last of submission of the application. Accordingly, in the instant case, it has to be held that the respondents were eligible to be considered for the post on the last date of submission of Application.

20. The learned Single Judge, after considering the issue threadbare, held that TNPSC had created a confusion by not notifying clearly that the candidate must hold a valid Driving Licence as on the date of Notification and therefore, the respondents are entitled to succeed and accordingly, allowed the writ petitions. We do not find any reason to interfere with the findings of the learned Single Judge."

14.The above said decision is squarely applicable to the facts and circumstance of this case as in this case also the notification did not prescribe any specific cut off date for possession of technical qualification. Here, in this case,



admittedly the appellants wrote their Senior Grade Typewriting examination in the month of August, 2014 and the results were also published and in respect of receipt of certificate alone there was delay, for which they cannot be found fault with. No doubt, the learned senior counsel for the respondent has relied upon number of judgments in support of his contention. There cannot be any quarrel in accepting the said principle. But, so far as the present case is concerned, since no cut off date was fixed / specified for technical qualification and also since the rule is silent in this regard, those judgments cannot be applied to the facts and circumstances of the case.

15. At the risk of repetition, this Court is inclined to submit that in the instant case, since the rule is silent and since no cut off date was fixed for technical qualification, the last date for application should be taken into consideration as the date for acquiring the required technical qualification. The appellants have admittedly obtained their Senior Grade Typewriting Certificates even before the last date for submission of the applications and also applied for the examination even before the date for submission of the applications. They have subsequently passed in the written examinations and also appeared for certificate verification. Based on the interim order of this Court, now they have also participated in the counselling. In view of the above, we are of the view that the order passed by the learned Single Judge cannot be sustained.

16. In the result, these writ appeals are allowed and the order passed by the learned Single Judge is set aside and the first respondent is directed to give appointment to all the appellants in the post of Typist as per their rank within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town,
Chennai -3.

2.The Director,
<https://hcservices.ecourts.gov.in/hcservices/>
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3.The Chairman,
Board of Examinations,
Department of Technical Education,
Chennai.

+1cc to MR.T.Lajapathi Roy, Advocate, SR.51404
+1cc to M/S.Ajmal Associates, SR.51039
+1cc to Mr.V.Paneerselvam, Advocate, SR.51406
+1cc to Mr.F.Deepak, Advocate, SR.51284
+1cc to Mr.K.Senthil, Advocate, SR.51241

GCG

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