

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.2484 of 2018

and

W.M.P.Nos.3027 and 3028 of 2018

L.R.Arun Prakash ... Petitioner

Vs

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

2.The Controller of Examinations,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai-3. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to to issue a Writ of Certiorarified Mandamus, calling for records relating to the e-mail communication of the 1st respondent dated 30.01.2018 to quash the same and to consequently, direct the respondents to consider the claim of the petitioner for appointment to the post of Assistant Commissioner of Labour on merits and as per law.

For Petitioner : Mr.L.Chandrakumar

For Respondents: Mr.M.Loganathan,
Standing Counsel

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O R D E R

The petitioner, who was not even passed his Diploma as per the Notification No.1/2018 dated 12.01.2018 issued by the Tamil Nadu Public Service Commission, has come to this Court challenging the E-mail Communication of the Tamil Nadu Public Service Commission, the 1st respondent herein, dated 30.01.2018 and to quash the same and seeking further direction to direct the respondents to consider the claim of the petitioner for appointment to the post of Assistant Commissioner of Labour on merits and as per law, as though the impugned Notification

informed the petitioner that with regard to Section 20(4)(iv) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, he is not eligible to apply for the post of Assistant Commissioner of Labour.

2. The learned Counsel for the petitioner submitted that the petitioner having passed his 10th Standard, +2 and also B.E. Degree Course, joined the M.B.A. Course and moreover, he has also joined the one year Diploma Course in Labour Law through Distance Education during the year 2016-2017 in the Annamalai University. However, after completion of the Diploma Course, he was unable to take part in the Examination due to family reasons which are beyond his control and therefore, he appeared for the December, 2017 Examination which consisted of three papers, namely, two papers on Labour Law and one paper on Administrative Law. The Examinations were held on 06.01.2018 to 8.01.2018, but the results were not declared till date.

3. The learned Counsel further submitted that in the meanwhile, Notification No.12/2018 dated 12.01.2018 inviting applications through Online for direct recruitment to the post of Assistant Commissioner of Labour (formerly named as Labour Officer) was issued by the 1st respondent herein. As the petitioner is presently working as Assistant in the HR&CE Department, after being selected in the Group 2A Services and after going through the Notification, he has come to this Court challenging the same on the ground that the impugned Notification suffers from an error in Note (i) wherein it is stated that with regard to the prescribed qualification for these posts, the results of the examination should have been declared on or before the date of notification. Since the petitioner is unable to clarify the same through Online because his application has not been accepted, he made a representation dated 18.01.2018 seeking to consider his claim for acceptance of the application for the post of Assistant Commissioner of Labour on the premise that since he had taken the last examination on 08.01.2018, well ahead of the date of notification and in the event of declaration of his results in Diploma in Labour Law and Administrative Law in future, that would relate back to the last date of examination, namely, 08.01.2018. Therefore, the Note 9 (i) in the impugned Notification has to read down to mean that the petitioner is also stand eligible to make his application as per the Notification without reference to Note (i) whereas the representation dated 18.01.2018 made by the petitioner has been rejected stating that as per Section 20(4)(iv) of Act 14 of 2016, one must have been declared as passed the course as on the date of notification. Such an approach is indicating the misleading of the fundamental rules and also the general rules, it is contended.

4. The learned Counsel also referring to FR.26(a)(2) would submit that the said rule benefits an individual aspirant to have the requisite qualification being obtained, possessed and acquired on the last date of the examination, namely with retrospective effect, even though the results are published subsequently and though the rule would say in so far as the Government Servant is concerned, but the underlying principles and that of the possession of the qualification would automatically have the retrospective effect. Therefore, failure to comply with the same in not accepting the application of the petitioner would result in great prejudice since the petitioner is possessing B.E. Degree from Anna University and he is awaiting results of Diploma in Labour Law and Administrative Law from Annamalai University and only because the last date of examination was mentioned as 08.01.2018, the petitioner having written the examination, he cannot be disqualified on the ground that his results are not even declared. If the results are published, it would definitely relate back to the last date of the examination, namely, 08.01.2018.

5. The learned Counsel for the petitioner has also submitted that FR 26(a)(2) would also reiterate the same thing for the purpose of considering any claim made by the Government Servants. When it is being the legal position, for the simple reason that the Annamalai University has not declared the results, the petitioner cannot be put to face great prejudice in not allowing to apply for the post of Assistant Commissioner of Labour. Again referring to a Division Bench order passed by Madurai Bench of this Court in a Batch of Writ Petitions in W.A. (MD) Nos.5/2017 etc. Batch, the learned Counsel for the petitioner submitted that while considering almost an identical issue, differentiating the educational qualification and technical qualification, it has been held that there is no cut off date fixed for the technical qualification, the last date for application should be taken into consideration as the date for acquiring the required technical qualification. Therefore, in the present case when the petitioner has admittedly acquired the educational qualification and also has joined the Diploma in Labour and Administrative Law through the Distance Education offered by the Annamalai University and awaiting for the results, the Note (i) of the Notification No.1/2018 dated 12.01.2018 is required to be quashed and a direction to be issued to entertain the petitioner's application.

6. Opposing the above prayer, Mr.M.Loganathan, the learned Standing Counsel, who takes notice for the Tamil Nadu Public Service Commission submitted that the order passed by the Division Bench stands totally on different ground wherein the Notification dated 14.10.2014 issued by the Tamil Nadu Public Service Commission inviting applications from the eligible

candidates specifically mentioned that as on the last date of submitting the application on 12.11.2014, they should have possessed the educational qualification. There is no any specific cut off date mentioned for acquiring the technical qualification. Therefore, the Division Bench, taking note of the fact that while fixing the cut-off date for acquiring the educational qualification, the TNPSC has miserably failed to mention the crucial date for acquiring the technical qualification and also taking into account that the candidates therein acquired the educational qualification and with regard to the technical education, they have written the examination, but they have not obtained their results, allowed them to take part in the examination. But, in the present case, the impugned Notification specifically issued making the issue very clear that the results of the examination should have been declared on or before the date of the notification which is given as under :

'' Note

(i) The qualification prescribed for these posts should have been obtained by passing the required qualification in the order of studies, viz., 10th + HSC or its equivalent + Bachelor's Degree + PG Degree/PG Diploma as required under Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

(Results of the examination should have been declared on or before the date of notification)''

Hence prays for dismissal of the present Writ Petition.

7. I have considered the submissions made on either side and I have also perused the records carefully.

8. A perusal of the impugned Notification clearly shows that for the post of Assistant Commissioner of Labour, it has been mentioned that the candidate should have possessed the educational qualification as on 12.01.2018. The qualification mentioned in Paragraph 6(B) includes Degree of M.A. Labour Management awarded by the Tamil Nadu Institute of Labour Studies, Chennai or any degree and a degree or Diploma in Social Science or Labour Relations or Social Welfare or a Diploma in Labour Laws awarded by the Indian Law Institute, New Delhi or a Diploma in Labour Laws and Administrative Laws etc. Therefore, I could see that as per the objection raised by the learned Counsel for the Tamil Nadu Public Service Commission, there is no technical qualification fixed. The qualification fixed by the TNPSC, namely Degree of M.A. Labour Management or any degree or a degree or diploma in any Social Work or a Diploma in Labour Laws awarded by the Indian Law Institute, New Delhi is part of the educational qualification. Hence, when the petitioner is required to possess Bachelor's Degree + Post

Graduate Degree as required under Section 25 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 on or before the date of notification, in my considered opinion, the petitioner, admittedly has not obtained his results from the Annamalai University and it is also not known whether he is going to succeed or fail in the said examination. Under such circumstances, it is not proper for the petitioner to approach this Court with such a pre matured prayer that he is also entitled to apply for the post of Assistant Commissioner of Labour along with all other eligible candidates. Consequently, this Court is also not able to find any prejudice going to be caused to the petitioner if he is not permitted to apply for the said post because if for any reason, the petitioner's result in the Diploma in Labour Law will not come in his favour, then it will cause further problem to the respondents.

9. In view of all the above, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

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

2.The Controller of Examinations,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai-3.

+1cc to Mr.L.CHANDRAKUMAR, Advocate, S.R.No.8784

+1cc to Mr.M.LOGANATHAN, Advocate, S.R.No. 8285

TR(12/02/2018)

W.P.No.2484 of 2018

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