

IN THE H IGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No.8710 of 2015

S.Nandhakumar

... Petitioner

Vs.

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

2.Controller of Examination,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai - 3.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declare the action of the respondents in not calling the petitioner for interview to the post of Motor Vehicle Inspector Grade-II pursuant to his application dated 29.06.2012 and pursuant to the written examination on 26.08.2012 and not including the name of the petitioner in the provisionally selected candidates as illegal, arbitrary and contrary to law and consequently direct the respondents to call the petitioner for interview and appoint the petitioner in the post of Motor Vehicle Inspector Grade-II.

For Petitioner : Mr.Balan Haridass

For R1 & R2 : Mr.P.H.Aravindh Pandian, AAG
Assisted By Dr.M.Devendran

ORDER

The petitioner has filed this writ petition seeking for issuance of a writ of declaration to declare the action of the respondents-Tamil Nadu Public Service Commission (TNPSC) in not calling him for the interview to the post of Motor Vehicle

Inspector Grade-II, pursuant to his application dated 29.06.2012 and pursuant to the written examination held on 26.08.2012 and not including his name in the provisionally selected candidates as illegal, arbitrary and contrary to law, and consequently to direct the respondents to call him for the interview and thereby appoint him in the post of Motor Vehicle Inspector Grade-II.

2. Mr. Balan Haridass, learned counsel for the petitioner submitted that the petitioner, after passing the SSLC in the year 1993, +2 in the year 1995, Diploma in Mechanical Engineering in the year 1997 and Post Diploma in Automobile Engineering in the year 1999, had worked as a Supervisor in Stanes Motors (South India Limited), Coimbatore, from 02.05.2000 to 30.04.2002. Besides, he had also worked as Heavy Vehicle Driver from May 2002 to June 2003 with Rhishikesh Lorry Service, Sivakasi. Subsequently, he had also worked as Mechanic in Neushath Automobiles, Erode, from 01.07.2003 to 31.08.2004 and then he worked in ABT Industries, Coimbatore, as Service Engineer from 08.11.2004 to 31.12.2005 and in the same concern, he worked as a Deputy Manager (Service) from 01.11.2006 to 12.07.2008. It is also stated that the petitioner is having a valid license to drive Heavy Transport Vehicle.

3. Whiles, the first respondent / TNPSC issued a Notification dated 25.06.2012 inviting applications from the eligible candidates for the post of Motor Vehicle Inspector Grade-II. The petitioner had also applied for the said post through online and thereafter, he had also participated in the written examination held on 26.08.2012. According to him, he has answered 175 questions correctly out of 200 questions. Whiles, after the written examination, he was directed to send the attested copies of the relevant certificates viz., evidence for date of birth, Diploma Certificate, experience certificate, driving license, experience for driving heavy transport vehicle, community certificate, conduct certificate and NOC from the present employer. Thereafter, the petitioner, in his letter dated 05.04.2013, had forwarded all those certificates as sought for by the second respondent. However, he was not called for the interview and later on, he came to know that the respondent had conducted the interview on 05.03.2015 for those 39 candidates who were called for interview and subsequent to this, the TNPSC had published the results in respect of 40 candidates except the petitioner, whose result was withheld.

4. According to the petitioner, he had answered all those 175 questions correctly and therefore, he ought to have secured 262.5 marks which is equal to the highest marks of 262.2 marks secured by one candidate in the written test. Therefore, had the respondent released the results of the petitioner, the petitioner would have got selected for the said post as the last

person in the BC category secured 205.50 marks only. In view of such circumstances, the petitioner gave a representation dated 22.02.2015 to the second respondent requesting him to inform the reason as to why his name has been left out. But, there was no response. In the meanwhile, the TNPSC conducted the oral test on 05.03.2015 and thereby released the provisional list on 06.03.2015. As the petitioner has correctly answered 175 questions out of 200 questions, he is entitled to be awarded 262.5 marks out of 300 marks in the written examination. Therefore, the action of the TNPSC in not calling him for the interview is illegal, hence, a direction may be given to the respondents to appoint him in the post of Motor Vehicle Inspector Grade-II, he pleaded.

5. Countering the stand taken by the TNPSC that the petitioner did not claim his driving experience in the online application form, learned counsel for the petitioner, by filing a rejoinder affidavit to the counter affidavit, submitted that there was no link provided in the online application for claiming driving experience, therefore, in view of non-provision of link to enter his driving experience, he has forwarded all those relevant certificates to the TNPSC on 22.04.2013 through registered post, hence, it is contended, the rejection order passed by the TNPSC on the ground that he has not produced the experience certificate is wholly unwarranted.

6. Referring to a judgment of the Hon'ble Division Bench of this Court in V.Premanand v. State of Tamil Nadu and others [CDJ 1995 MHC 256], learned counsel for the petitioner submitted that when a similar question came up for consideration whether a person claiming admission under the special category reserved for children born of inter-caste marriage should submit a certificate from the Tahsildar of the respective area in the prescribed format along with the application to the Selection Committee, it has been held that when a candidate was able to produce the certificate before the application was scrutinised for admission, rejection of such application amounted to giving greater value to the procedure than to the substantive right. As long as the application was filed in time and the applicant was able to satisfy the requirement of production of certificate from the appropriate authority, before his application was considered for selection, it was not at all open to the Selection Committee to refuse to consider the application only on the ground that such a certificate had not been produced along with the application.

7. Again, he has also relied on yet another Division Bench judgment of this Court in Dr.A.Rajapandian v. State of Tamil Nadu and others [(2007) 1 MLJ 820] for a proposition that rejection of the applications of the petitioners for the post of Veterinary Assistant Surgeon by the Tamil Nadu Public Service

Commission for not signing the OMR Application, declaration column and photo identity is justified, as such omission renders the particulars furnished unauthenticated.

8. By relying on the judgment of the Hon'ble Apex Court in Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board and others [(2016) 4 SCC 754], learned counsel for the petitioner submitted that if a candidate is able to submit OBC Certificate before the provisional list was published to claim the benefit of the reservation of OBC Category, he is still eligible for selection to the post under the OBC category. Therefore, in the case on hand, since the petitioner, through his letter dated 22.04.2013, had submitted the relevant certificates viz., Evidence for date of birth, diploma certificate, experience certificate, driving license, experience for driving heavy transport vehicle, etc., which are not disputed by the respondent TNPSC, it has to be construed that the application submitted by the petitioner for the post of Motor Vehicle Inspector Grade-II is in order, therefore, a direction may be given to the respondent TNPSC to appoint him in the said post.

9. Mr.P.H.Aravindh Pandiyan, learned Additional Advocate General, appearing for the TNPSC, by filing a detailed counter affidavit, submitted that the petitioner is one of the candidates, who had applied in the TNPSC's website for the post of Motor Vehicle Inspector Grade-II and he has also participated in the written examination held on 26.08.2012 and he was assigned with the Register No.00101214. In the online application, he had claimed that he is possessing the following workshop experience;

(i) ABT Industries Ltd., Ukkadam Coimbatore (In that workshop, he worked as a service engineer from 11/2004 to 7/2008)

(ii) Neushath Automobiles, 683, Sathi Road, Erode (In that company, he worked as mechanic from 7/2003 to 8/2004).

(iii) Stanes Motors Ltd., Trichy Road, Coimbatore (In that company, he worked as Supervisor, from 5/2000 to 4/2002).

Thereafter, when the supportive documents were sought for by the TNPSC, the petitioner had also sent certain documents relating to his driving experience, including a certificate received from M/s.Rhishikesh lorry service stating that he worked in the said concern for the period from May, 2002 to June, 2003, however, he has not made any such claim in the online application. Therefore, his application was rejected on the ground that he had subsequently procured the driving experience from M/s.Rhishikesh lorry service, hence, he was not considered for further stages of selection process, for, the certificate

produced by the petitioner claiming experience qualification, after the date of application, cannot be accepted. Thus, on this score, learned Additional Advocate General prayed for dismissal of the writ petition.

10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. It is not in dispute that the petitioner had appeared for the written examination conducted by the TNPSC held on 26.08.2012 for the post of Motor Vehicle Inspector Grade-II. After the written test, the second respondent, vide his letter dated 05.04.2013, directed the petitioner to forward the attested copies of evidence for date of birth, diploma certificate, experience certificate, driving license, experience for driving heavy transport vehicle, community certificate, conduct certificate and NOC from the present employer. Thereafter, the petitioner had also, vide his letter dated 22.04.2013, forwarded the said documents as sought for by the second respondent. According to the TNPSC, on scrutiny of those documents, it was found that the experience certificate obtained from M/s.Rhishikesh lorry service for the period from May, 2002 to June, 2003, was not mentioned by the petitioner while filling the online application form for the post of Motor Vehicle Inspector Grade-II and therefore, the said certificate procured by the petitioner after forwarding the application cannot be accepted.

12. At this juncture, the only crucial question that arises for adjudication is whether the rejection of the petitioner's application for the post of Motor Vehicle Inspector Grade-II for not claiming the experience certificate obtained from M/s.Rhishikesh lorry service from May 2002 to June 2003, while filling the online application is justifiable or not.

13. In a similar issue, the Hon'ble Division Bench of this Court in Dr.A.Rajapandian's case (cited supra) held that rejection of the applications of the petitioners therein for the post of Veterinary Assistant Surgeon by the Tamil Nadu Public Service Commission for not signing the OMR Application, declaration column and photo identity is justified as such omission renders the particulars furnished unauthenticated. In the said case, the TNPSC, in August, 2015, invited applications in respect of appointment to the post of Veterinary Assistant Surgeon (Direct Recruitment) in the Tamil Nadu Animal Husbandry Services for the year 2005-06. Clause 12 of the Notification therein enumerated the list of enclosures to be sent along with the application and that the Commission found that the applications of 448 candidates were liable to be rejected for one or other reasons and therefore, it had rejected the same. Challenging the same, writ petitions were filed contending that

rejection of their applications on technical reasons, such as OMR application not signed, declaration column not signed, non production of Veterinary Council Registration Certificate, is arbitrary, unreasonable and in violation of the principles of natural justice. One of the arguments advanced by the petitioners was that there was no specific requirement about the enclosure of Veterinary Council Registration Certificate and had the Commission specifically mentioned this in the Notification/Advertisement or in the Information Brochure or in the Check List of the documents enclosed, the petitioners therein would have enclosed the same, and therefore, non-enclosure of Veterinary Council Registration Certificate is neither wilful nor deliberate, hence, the Commission was not right in rejecting their application on the ground of non-production of Veterinary Council Registration Certificate. The Hon'ble Division Bench, by rejecting the said contention, has held that the Commission was justified in rejecting the application of the petitioners therein for not submitting the said Certificate along with the application. In the said judgment, the Division Bench also made a distinction with regard to a decision in Premanand's case (cited supra) that the right to selection is determined by the fact that the candidate belonged to that category and not by the Certificate, which was only a piece of evidence.

14. In V.Premanand's case (cited supra), the question was, the candidate belonging to the category of children born of inter-caste marriage between S.C./S.T. and Forward Community determines his right for selection to the seats reserved for children born of inter-caste marriage or it is the certificate issued by the authority to that effect. While filling the application, the petitioner therein was not able to produce such certificate, however, he has mentioned that he had applied for a certificate from the Tahsildar and the same had not yet been issued and the same will be produced as soon as it is issued. Therefore, since the Community Certificate shows that the petitioner therein was born through inter-caste marriage, the Hon'ble Division Bench has taken a view that as long as it is not in dispute that the petitioner belongs to that category of children born of inter-caste marriage between SC/ST and forward community and in addition to this, he was able to produce the Certificate before the application was scrutinised for admission, rejection of such application amounted to giving greater value to the procedure than to the substantive right.

15. But, in the case on hand, the issue is that whether the petitioner has the driving experience from May, 2002, to June, 2003, in M/s.Rhishikesh lorry service, for which, he has not admittedly made any claim while filling the online application for the post of Motor Vehicle Inspector Grade-II. Secondly, he has produced the said certificate only after the

written examination held on 26.08.2012, although the last date for submitting the application through online was on 25.07.2012. Therefore, the reason for rejection of the petitioner's application given by the TNPSC that the petitioner had procured the experience certificate only after the written examination held on 26.08.2012, cannot be disputed. Hence, I do not find any merit in the writ petition and accordingly, it is dismissed as devoid of any merit. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

+lcc to Mr.Balan Haridas, Advocate sr.no.37301

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W.P.No.8710 of 2015

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