

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 20.12.2018

CORAM:
THE HON'BLE DR. JUSTICE S.VIMALA

Writ Petition No.29349 of 2018
& WMP No.34298 of 2018 & 35552 of 2018

Suthanthiramoorthy

.. Petitioner

- Vs -

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar, Park Town,
Chennai 600 003

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records relating to the impugned Rejection List published by the respondent in their website relating to the post of Assistant Horticultural Officer 2016-17 and Assistant Horticultural Officer (Shortfall vacancies SC/ST candidates only) and quash the same in so far as the petitioner is concerned and consequently to direct the respondent to select and appoint the petitioner as Assistant Horticulture Officer, in pursuant to the Notification No.10/2018 dated 25.05.2018 issued by the respondent. (Prayer amended as per the order of this Court, in WMP No.35551/2018, even dated).

For Petitioner : Mr. K.Balaji

For Respondent : Mr. M.Devendran, Sr. Counsel.

O R D E R

The writ of mandamus, originally filed has been amended by the petitioner as writ of certiorarified mandamus, seeking to quash the Rejection List published by the respondent relating to the post of Assistant Horticultural Officer 2016-17 and Assistant Horticultural Officer (Shortfall vacancies SC/ST candidates only) and to quash the same, in so far as the petitioner is concerned and to direct the respondent to select and appoint the petitioner as Assistant Horticulture Officer.

2. The respondent invited application only through "online" for direct recruitment to the post of Assistant Horticulture Officer for filling up the vacancies of 757 regular vacancies along with 48 short fall vacancies (45 SC, 3 ST) totalling to 805 vacancies. The last date for submission of the application was 24.06.2018. The petitioner belonged to SC community and had applied through online on the basis of notification. There is

no age limit for SC / ST candidates and the educational qualification for the post is "a pass in Higher Secondary Education and a pass in the 2 years Diploma Course in Horticulture". The petitioner had completed his higher secondary in the year 2011 and joined two years Horticulture Diploma Course in the year 2012 and had completed the same in the year 2014.

2.1. The petitioner was issued with a hall-ticket for the written examination. On 11.08.2018 written examination has taken place. Thereafter, the respondent had published the marks of the candidates in which it is stated that the petitioner had secured 127.50 in Paper-1 and 76.00 in Paper-II and totally he had secured 203 marks. His overall rank is 340 and his communal rank is 74.

2.2. At the time of sending application through online, his date of birth was wrongly filled up as 23.04.1990 instead of 23.04.1991 and also the date of issuance of community certificate also wrongly filled as 16.07.2007 instead of 16.11.2007. The said error is only an inadvertent mistake committed in the computer centre and immediately he corrected in the One Time Registration, through online, on 19.09.2018 and also by sending an e-mail dated 20.09.2018. Thereafter, the petitioner brought the same to the knowledge of the respondent, by letter dated 23.09.2018. The respondent also had informed that his correction was updated.

2.3. The respondent, on 27.09.2018, had published the provisional selection list for certificate verification / counselling of the candidates who secured 150 marks in total. They have been called for certificate verification cum counselling and was also issued with letter dated 03.10.2018 calling upon the petitioner to attend the certificate verification cum counselling on 23.10.2018.

2.4. After the receipt of counselling letter also, the petitioner had submitted a letter to the respondent about the error committed at the time of filling up of application and its correction by registered letter dated 10.10.2018. The respondent had issued mail dated 12.10.2018 that necessary action will be taken. The petitioner also attended the certificate verification on 23.10.2018. The respondent wanted a letter from the petitioner stating that there was an error at the time of filing up of the online application and it is an inadvertent one. But after obtaining the letter, the petitioner was not allowed to participate in the counselling. The candidates selected were lesser than the notified vacancies and all the eligible candidates were issued with selection order. It is pertinent to mention that one Rajavel, who has secured 152 total marks and ranked 716 in overall and 182 in communal, had been selected and appointed, whereas the petitioner, who secured 203.5 totally and ranked 340 overall and 74 communally, was not selected by the respondent.

2.5. The petitioner was a meritorious candidate and

belonging to Scheduled Caste and the error / mistake committed by the petitioner through online was already rectified. The action of the respondent in depriving the valuable right of the petitioner to get employment is challenged in this writ petition.

3. Alleging that it is only a clerical mistake and inadvertent mistake which was also rectified, the petitioner submitted a detailed representation to the respondent on 26.10.2018. The petitioner, left with no other option except to invoking the extraordinary jurisdiction of this Court seeking efficacious and effective and speedy remedy, has approached this Court.

4. The respondent has filed a counter affidavit stating that at the time of certificate verification, it was found that the petitioner has wrongly claimed the date of birth as 23.04.1990 instead of 23.04.1991.

4.1. It is relevant to quote paragraph 2 (10) of the TNPSC instructions to candidates, which reads thus:-

"Please note that all the particulars mentioned in the online application including Name of the applicant, Post applied for, Communal Category, Date of Birth, Address, final. However, applicants can modify certain fields till the last date specified for applying online. Certain fields are fixed and cannot be edited even before the closing date. Applicants are hence requested to fill in the online application form with utmost care as no correspondence regarding change of details will be entertained after last date for applying."

4.2. In paragraph cited supra, it is specifically stated that certain particulars like post applied for, communal category, date of birth, address, e-mail I.D., and center of examination will be considered as final. But, however, an option has been given to the applicants to modify certain fields till the last date specified for applying online. Certain fields which are fixed cannot be changed even before the closing date. Therefore, the applicants have been requested to fill up the online form with utmost care, as no correspondence regarding the change of details will be entertained after the last date of application.

4.3. Relying upon this clause also, the learned Standing counsel appearing for the respondent / TNPSC contended that the petitioner who proved to be negligent and who cannot even fill the application form properly, cannot be considered for appointment.

5. It is submitted by the learned counsel appearing for the petitioner that the date of birth as entered by the petitioner on 19.09.2018 is not for any particular post but one time registration; it is just a collection of information from the applicants and giving a separate dashboard to each applicant to

facilitate them to maintain their own profile; the applicants, who wish to apply for any post shall click "apply" against the post notified in the Commission's website and use the same User ID and Password given for One Time Registration; the User ID and Password are created by the applicants themselves.

5.1. Much reliance was placed upon paragraph 12 (L) and (M) of the Notification No.10/2018, dated 25.05.2018. It is contended that as a wrong entry is made with regard to the date of birth in the online application, the petitioner, who committed this mistake, is liable to bear the responsibility for that.

5.2. Relying upon the declaration to the TNPSC instructions to the candidates, it is contended by the learned standing counsel appearing for the respondent that in the event of any information being found false or incorrect or ineligibility being detected before or after the examination or at any stage any action can be taken against the petitioner by the TNPSC including rejection of the application. On this basis, it is contended that the rejection of the application of the petitioner is justified.

6. Under the stated circumstances what is to be considered is, whether the mistake committed by the petitioner is so grave to the extent of rejecting the application itself.

7. Whether by the rejection of the application, the petitioner is left with no remedy except to apply for the next recruitment.

7.1. The incidental question will be, whether the mistake will be an inadvertent or wilful mistake.

7.2. This Court raised a specific question, whether the mistake made is grave mistake or calculated mistake or a mistake aimed with any hidden agenda. In other words, whether the act of the respondent can be characterised as the mistake made with any hidden agenda or to get an unfair advantage over another person or with an aim to get extended period if in case the petitioner is appointed.

8. The learned standing counsel appearing for the respondent is not able to point out anything. The main contention raised by the respondent is that, if the claim of the petitioner is allowed, it is like opening of pandora box and flood gate and the candidates, who committed simple mistakes, would rush to respondent office, thereby paralysing the administration of the respondent. It is also contended by the learned standing counsel for the respondent that the provisions in the instructions to the candidates are mandatory and no relaxation can be made from them.

8.1. Relying upon the decision reported in the case of Rahul

Prabhakar v. Punjab Technical University, Jalandhar and others, AIR 1998 Punjab and Haryana 18, it is claimed that when it is provided in the information brochure that incomplete applications and the applications received after the prescribed date shall not be entertained under any circumstances, it will go to show that the mandatory nature of clauses made and therefore, the petitioner ought to have been very careful in filling up the application form.

8.2. Reliance is also placed upon the decision of the Hon'ble Supreme Court in the case of Lakshmi Narain v. Union of India, AIR 1976 SC 714 wherein it was observed as follows:-

"... if the provision is couched in prohibitive or negative language, it can rarely be directory, the use of preemptory language in a negative form is per se indicative of the intent that the provision is to be mandatory..."

9. The learned standing counsel appearing for the respondent, therefore, contended that the negative prohibitory words used in the Information Brochure go to establish the mandatory nature of that provision and the petitioner should have been very careful in using the same and the petitioner has to bear the cross for the mistake done.

10. Now the issue to be considered is, whether the clauses in the instructions to the candidates should be held as directory or mandatory. What are the circumstances, which would be available to consider the clause as directory or what are the circumstances which would be relied upon to show that it cannot be mandatory but directory.

11. The fact remains that the application could be filled only online and not through offline. In other words, there is no option left to the petitioner to fill up the application form even if they are inclined by sending a hardcopy of the application. The only method available is through Online. If the applicant is versatile in handling the computer, he can send the application through Online.

11.1. The "digital divide" between the persons having technical knowledge and those who are not having is so wide that it cannot be presumed that all of them are familiar with the operation process in the computer application. When it is specifically stated that only in the computer centre the application form was filled up and having regard to the nature of the feather touch that is made available in the keyboard, the contention that even the inadvertent mistake can be construed as mandatory and this mistake should be used to punish the petitioner by rejecting his application even after the petitioner establishing his talent and knowledge in the horticulture division cannot be accepted. When it is proved that the petitioner is a competent person to be eligible for the

post of Horticulture Officer, on account of the simple mistake committed by using the machine cannot be a ground for rejecting the application.

11.2. Even assuming that the petitioner is not competent the inadvertent mistake should always be excused.

13. There is certainly a difference in the valuation / evaluation made by human beings and machines. If no mistake can be corrected and every mistake is to be considered as final, then it is enough to use artificial intelligence system and there is no necessity for the involvement of human agency at all.

14. When no malafide is established, no hidden agenda can be attributed and no undue advantage is taken by the petitioner in committing the mistake, then it is necessary that the respondent must condone the mistake and take the application of the petitioner.

15. Under the stated circumstances, the impugned Rejection List published by the respondent in their website relating to the post of Assistant Horticultural Officer 2016-17, in so far as the petitioner is concerned, is hereby set-aside. The respondent is directed to appoint the petitioner as Assistant Horticulture Officer, pursuant to Notification No.10 / 2018 dated 25.05.2018, within a period of four weeks from the date of receipt of a copy of this order.

16. With the above directions, this writ petition is allowed. No costs. Consequently, the connected WMPs are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srk

To
The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar, Park Town,
Chennai 600 003.

+2ccs to Dr.M.Devendran, Advocate, S.R.No.89548

W.P.No.29349 of 2018 &
& WMP No.34298 of 2018 & 35552 of 2018

RR(CO)
rrs 07/03/2019