

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.1305 of 2019

and

WMP.No.1465 of 2019

S.Selvarasu

...Petitioner

Vs

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Transport,
Fort St.George, Chennai - 600 009.

2.Tamil Nadu Public Service Commission,
Rep. By its Secretary,
TNPSC Road, V.O.C.Nagar,
Park Town, Chennai - 600 003.

3. The Controller of Examination,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Park Town, Chennai - 600 003.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Mandamus, directing the respondents to consider, select and appoint the petitioner as Motor Vehicle Inspector Grade II, in the transport subordinate service for the year 2018 in the physically handicapped/Differently abled quota.

For Petitioner : Mr.N.Jothi for B.Lenin Balu

For Respondents : Mr.A.N.Thambidurai for R1

Additional Government Pleader

Mrs.C.N.G.Niraimathi R2 & R3

Addl.Govt.Pleader for R2,3

O R D E R

The relief sought for in the present writ petition is to direct the respondents to consider select and appoint the petitioner as Motor Vehicle Inspector Grade II, in the transport

subordinate services for the year 2018 in the physically handicapped/Differently abled quota.

2. The learned counsel appearing on behalf of the writ petitioner states that, the writ petitioner passed SSLC in the year 1986 and completed his Diploma course in Mechanical Engineering in Automobile Technology, as elective subject and passed in first class at the Board's final examinations held in April 1989. The writ petitioner enrolled his name in the District Employment Exchange. The writ petitioner belongs to Backward Class community. Pursuant to the recruitment notification issued by the respondent, for recruitment to the post of Motor Vehicle Inspector Grade-II, the writ petitioner submitted his application through online. The writ petitioner is a differently abled person and his disability is assessed 45%, which is of permanent disability. In the application details regarding "are you differently able person/kh%WqÂwzhëah?".

3. The writ petitioner has clearly instructed that the computer boy to mention as "Yes" in a differently abled person, it was erroneously entered as "No". The learned counsel for the writ petitioner states that, it is only an operational mistake committed by the computer operator, while sending application through online and in fact, the writ petitioner is a differently abled person assessed to 45% permanent disability and accordingly, he is entitled to avail the quota allotted for differently abled person for recruitment to the post of Motor Vehicle Inspector Grade-II. On account of the fact that, the writ petitioner has erroneously marked as "No" in the said column, his application is not considered in the process of selection. Thus, the writ petitioner is constrained to move the present writ petition.

4. It is contended that, the mistake is genuinely an inadvertent one and the said mistake was corrected immediately within five minutes in the online application itself and the said correction made was acknowledged by the respondent immediately. Thus, there is no delay even in correcting the mistake and the said mistake was not intentional and therefore, the writ petitioner must be permitted to participate in the process of selection, in accordance with the procedures contemplated.

5. The learned counsel for the Tamil Nadu Public Service Commission relying on the counter affidavit filed by the Tamil Nadu Public Service Commission, states that, the commission in its notification No.03/2018 dated 14.02.2018, invited application through online mode, from the eligible candidates for direct recruitment to the post of Motor Vehicle Inspector Grade-II, to fill up 113 vacancies. The writ petitioner who belongs to the BC category submitted his online application on

13.03.2018. The counter also states that, while submitting his online application, the writ petitioner has opted "No" against the column "are you a differently abled person". Thereafter, on 22.03.2018, a mail to a commission, wherein he has stated that his application number is 803002248 and he is physically challenged person.

6. The writ petitioner has also made a request to change the above details in respect of the claim made by him. The Commission in its reply dated 23.03.2018 has informed the writ petitioner that the last date of online application to the post of Motor Vehicle Inspector Grade-II was over on 13.03.2018 itself. Thus, the request of the candidate cannot be complied with. This Court is of the considered opinion that, such mistakes done inadvertently should not deprive the opportunity of a person, who is otherwise fully qualified and eligible in the process of selection. In this regard, the three Judges Bench of the Hon'ble Supreme Court of India, in the case of Dolly Chanda Vs. Chairman, JEE & Others, reported in 2005 (9) SCC 779, held as follows:-

"7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

8. This principle was explained and applied in Charles K. Skaria v. Dr. C. Mathew [(1980) 2 SCC 752 : 1980 SCC (L&S) 305] . The controversy here related to admission to a postgraduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or subspecialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the

Selection Committee before completion of selection in an authentic or acceptable manner. The prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to postgraduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below: (SCC pp. 762 & 763)

"20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. ... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate

this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from overemphasis on the external rather than the essential. We think the Government and the Selection Committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like marklists from universities, why, even bail orders from courts and government orders from public offices."

7. Considering the legal principles settled by the Hon'ble Supreme Court of India, this Court is of an opinion that, the writ petitioner had inadvertently marked as "No" in the column stating "are you differently abled person or not". However, the writ petitioner corrected the mistake immediately within five minutes in the online application itself and the respondent also acknowledged the same. Though, the respondents states that, the correction was received after sometime, the fact remains that, the respondent had received the correction and such a correction will not affect the particulars to be furnished by the writ petitioner.

8. However, in para 9 of the counter affidavit, it is stated that, the Government issued G.O.Ms.No.20, Welfare of Differently Abled Person Department, dated 20.06.2018, publishing a list of posts identified under Group-A and B category, suitable for differently abled person. The said G.O does not cover the Transport Subordinate Services. Hence, no vacancy was earmarked for differently abled category in the said recruitment.

9. In view of the fact that, the quota allotted to the differently abled category is not available as far as the post of Motor Vehicle Inspector Grade-II is concerned, the answer provided by the writ petitioner in the online application may

not have any implication as far as the selection of writ petitioner is concerned, in accordance with the terms and conditions as well as on the merits. Thus, the case of the writ petitioner is directed to be considered along with all other eligible candidates on merits and in accordance with law and in consonance with the terms and conditions stipulated in the recruitment notification.

10. Accordingly, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

Pkn

To

1. The Secretary,
Government of Tamil Nadu,
Department of Transport,
Fort St. George, Chennai - 600 009.
 2. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai - 600 003.
 3. The Controller of Examination,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai - 600 003.
- +2 Ccs to Mr. B. Lenin Balu, Advocate sr 37933.
+1 CC to The Govt. Pleader sr 38854.

सत्यमेव जयते

W.P.No.1305 of 2018

SSI (CO)
SP(16/05/2019)

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