

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.08.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.2080 of 2019

&

W.M.P.No.2333 & 14065 of 2019

D.Anjalai

...Petitioner

Vs.

1.Tamil Nadu Public Service Commission,
Rep by the Secretary to Government,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai - 03.

2.The Controller of Examination,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai - 03.

3.The Secretary to Government,
Personnel and Administrative Reforms Dept.,
Secretariat, Chennai - 09.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the respondents to accept the date of birth furnished by the petitioner in petitioner application/Certificate and give petitioner appointment to the post of Typist on the basis of the marks scored by the petitioner.

For Petitioner : Mr.R.Singaravelan, SC
for M/s.M.Rajamani

For Respondents: Ms.C.N.G.Niraimathi for R.1 & R.2
Mr.J.Pothiraj, Spl.G.P. (for R.3)

ORDER

The petitioner is a degree holder having obtained degree in B.A. English Literature. She is also qualified typist having obtained higher certificates in both English and Tamil. The petitioner has also studied Diploma in Teacher Education. She belongs to Most Backward Community (MBC).

2.The petitioner applied for Combined Civil Services Examination (Group IV) notified by the respondent Commission. The petitioner has registered her application in the official website of the Commission through on-line. While mentioning the personal details, she had wrongly mentioned her date of birth as 06.06.1992 instead of 06.07.1992. On realizing her mistake, the petitioner infact wanted to correct the mistake, but she was not able to make correction in the net. Thereafter, the petitioner approached the Commission and sent mail on 09.06.2018, requesting the Commission for correction of her correct date of birth.

3.In the meanwhile, the petitioner has participated in the written examination held on 11.02.2018 and came out successful and has secured 229.50 marks and her ranking for the typist was 423 and her communal rank was 5020. The overall rank of the writ petitioner was 13248 and for the Typist 1244.

4.Thereafter, the petitioner was asked to upload her certificates on-line and as per the direction of the Commission, the petitioner uploaded SSLC, Type Writing Certificate etc., enclosing her letter dated 10.09.2018 requesting for correction of her date of birth, which was wrongly mentioned at the time of her application on-line.

5.After the declaration of result in the written examination, all the successful candidates were called for counseling on 21.01.2019. Since there was no invitation for the petitioner, she enquired in the respondent office and she was informed that her application was withheld due to mismatch of date of birth in her application and certificates produced by her. According to the petitioner, for a simple mistake, which had crept in while filling up on-line application, she was denied due participation in the final stage of selection and thereby, lost her valuable opportunity of being recruited to the public service. Since, the petitioner's candidature was not considered, despite her securing very high marks in the written examination, she is before this Court seeking for issue of writ of mandamus.

6.Shri.R.Singaravelan, learned Senior counsel appearing for the petitioner would submit that mentioning a wrong date of birth as 06.06.1992 instead of 06.07.1992 had no nexus at all with the ultimate ranking assigned to the petitioner. Therefore, a simple mistake committed by the petitioner due to her inadvertence cannot be held against the petitioner and deprive her of valuable opportunity of serving the Government. Therefore, the learned Senior counsel would urge this Court to direct the Commission to accept the correct date of birth of the

petitioner, as per the certificates produced by her and allow her to participate in further selection and appoint her as Typist, if she is otherwise qualified.

7.After notice Ms.C.N.G.Niraimathi, learned Standing Counsel entered appearance for respondents 1 & 2 and Mr.J.Pothiraj, learned Special Government Pleader entered appearance for the third respondent.

8.According to the learned counsel appearing for the Commission, in the counter affidavit, it is stated that on 04.01.2018, the Commission published a press release directing the candidates to state any change regarding date of birth, gender, community, destitute widow, disabled and Ex-servicemen, and the candidates were directed to make any correction on or before 10.01.2018 by post only and the candidates were also informed through website that correspondence through e-mail would not be entertained and further informed that any change of claims, after the mentioned date, will not be entertained. In this case, the petitioner appears to have sent the letter after the date fixed by the Commission and therefore rightly the same has not been considered by the Commission. According to the learned counsel, similar claims in respect of 18 other candidates were considered and rejected. She would further submit that based on paragraphs 12(M) & 13(a) of the Commission's Notification, such claim could be rejected and therefore, the Commission's action in not allowing the petitioner to participate in the counseling was justified, since her application was not in consonance with the clauses as contained in the Notification.

9.The learned counsel appearing for the Commission would also produce the details of the candidates selected against various categories. According to the list produced before this Court, it is found that candidates from Sl.No.8 to Sl.No.56 have secured less marks than the petitioner, who had admittedly secured 229.50 marks. Therefore, if only the simple error committed by the petitioner had been condoned, the petitioner could have been automatically admitted for appointment as Typist in Government service.

10.The learned Senior counsel would also submit that recently this Court in similar circumstances allowed the writ petition filed by a candidate in W.P.No.31759 of 2018, dated 23.07.2019. The learned counsel would draw the attention of this Court to paragraph Nos.5 to 11 which are extracted hereunder;

"5. On behalf of the respondent, Mr.M.Devendran, learned counsel entered appearance and a detailed counter affidavit has been filed. In the counter affidavit, it is submitted in para 8 that the

Commission has given instructions in the Notification in para 12(M), which reads as under:

"12 (M) Incomplete applications and applications containing wrong claims or incorrect particulars relating to category of reservation/other basic qualification/eligibility wise/age/communal categories/educational qualification/physical qualification and other basic eligibility criteria will be liable for rejection."

6. Therefore, it is stated that since the petitioner had given wrong information, his candidature was rejected. According to the counter affidavit, all the candidates were given option to rectify any information already furnished through OnLine mode on or before 10.01.2018, but the petitioner failed to avail the opportunity. In the said circumstances, the petitioner cannot claim for appointment as his candidature was not accepted by the Commission. However, the petitioner was allowed to participate in the counselling in view of the interim order of this Court, but his result has been withheld pending finalization of the Writ Petition.

7. Considered the rival submissions advanced by the learned counsels for the parties and perused the materials and pleadings placed on record.

8. The facts as narrated above have not been disputed by the Commission in its counter affidavit nor refuted during the course of oral submissions made by the learned counsel appearing for the Commission. However, the resistance put up by the Commission through its counsel is that the petitioner having mentioned wrong date of birth, is not entitled to be selected for appointment in view of the specific Clause prescribed in the Notification, which is extracted supra. Once the petitioner is admitted to have given wrong information, he lost his right to be considered for final selection for appointment. This Court is unable to appreciate how such contentions could be accepted when wrong entry of date of birth by the petitioner in his application has no bearing on his ultimate success in the written examination and the ranking assigned to him. Once the wrong date of birth is admittedly

immaterial to his performance in the written examination and ranking assigned to him, such mistake which had been inadvertently committed by the petitioner need to be considered liberally instead of sticking to rigidity of the Clause contained in the Notification in para 12(M), which is extracted supra. Incomplete application or applications containing wrong claims may entail disqualification of candidature, but such incomplete application or containing wrong claims must have some nexus to the performance and assignment of ranking to the candidates concerned. In this case, the mistake or wrong entry of date of birth is admittedly immaterial and which event, the Commission cannot be allowed to adopt stern approach and reject the candidature of the petitioner outright.

9. In fact, the petitioner on learning about the mistake committed by him, wanted to salvage the situation and therefore, he had submitted a letter on 7.9.2018, pointing out wrong entry of his date of birth. According to the petitioner, the correct date of birth was actually displayed on the website of the Commission. Therefore, it could be presumed that the content of his letter was considered and the mistake was rectified by the Commission itself. Even otherwise, the minor error in the filling up of the application form cannot result in negation of valuable right of the petitioner to enter into public service, particularly when the petitioner is more than qualified to be finally selected for appointment to Group-IV service. The petitioner being from a reserved community, is entitled to be considered with little more understanding by the Commission, particularly when he had secured a comfortable position which could ultimately result in his automatic selection and appointment even against general category.

10. In the said circumstances, this Court considers that the mistake committed by the petitioner in filling up the application form regarding his date of birth, cannot be construed as wrongful claim as defined in para 12(M) of the Notification and such minor mistake can always be condoned since such mistake cannot be construed as mis-representation or wrong claim in order to gain entry into the public service.

11. For the aforesaid reasons, the Writ Petition stands allowed and the Commission is directed to declare the results of the petitioner in pursuance of his participation in the counselling on 18.12.2018 and if the petitioner is found to be qualified and eligible for appointment either against general category or against the reserved category as the case may be, his name shall be forwarded to the Government to facilitate his eventual appointment to Group-IV service in pursuant to the Notification dated 14.11.2017. The Commission shall pass appropriate orders in this regard within a period of four weeks from the date of receipt of copy of this order. No costs."

11. Therefore, the learned Senior counsel would submit that this Court may also consider the claim of the petitioner on the basis of equity and fair play, since the petitioner cannot be allowed to lose her valuable right to enter into public service only for the simple mistake committed by her in giving the wrong date of birth while filling up the on-line application, which has admittedly no nexus with the participation in the written examination or with the ranking assigned to her.

12. Considered the submissions made on behalf of the petitioner and also Mrs. C.N.G. Niraimathi, the learned counsel appearing for the Commission and perused the materials and pleadings placed on record.

13. Although a stiff resistance has been put up by the learned counsel appearing for the Commission that the petitioner has made misrepresentation with wrong claim in terms of the provisions as contained in the Notification, this Court is unable to appreciate as to how a simple inadvertent mistake committed by the petitioner could result in the denial of valuable right of the petitioner in entering into the public service. When the factum of petitioner securing very high marks is admitted and several candidates who have secured far lesser marks than the petitioner have been selected for appointment, this Court does not think that the petitioner can be deprived of her right to be appointed only because of her simple error, which had crept in while filling up the application form on-line.

14. Any commission of such simple mistake is rather condonable and this Court has considered the claim which arose in the similar circumstances in the above mentioned writ petition and allowed the writ petition and directed the Commission to consider and appoint the petitioner therein after overlooking the simple mistake committed by the petitioner

therein.

15. In the said circumstances, this Court is of the view that the said reasoning given by this Court will squarely apply to the facts of the present case as well. It is very difficult for any citizen of this Country to make entry into public service and opportunity comes only once a while in their lifetime and when the petitioner herein has excelled in the written examination and secured more than sufficient marks entitling her to be considered for appointment, because of a simple mistake, the entire efforts by the petitioner cannot be allowed to go waste. In fact, if such mistakes are not condoned, it will only result in grave injustice to such candidates like the petitioner herein.

16. Moreover, this Court is of the view that there is a world of a difference between misrepresentation in order to make wrong claims and a simple inadvertent mistake. In the case of misrepresentation for wrongful claim, it would amount to cheating and fraud in order to secure employment. Whereas simple mistake, like the present one, which had absolutely no nexus whatsoever either with the participation in the written examination or with the ranking assigned to her need not be constituted as misrepresentation. In the said circumstances, the mistake committed by the petitioner need not be given undue importance and the Commission need not apply the provisions of the Notification strictly in such cases. Therefore, this Court is of the considered view that the petitioner has made out a case for grant of relief, atleast on equitable consideration.

17. In these circumstances, the respondent Commission is directed to correct the date of birth of the petitioner as per her certificate and allow the petitioner to participate in the counseling being the final stage of selection and select the petitioner, if she is otherwise fit for appointment. The Commission is directed to pass appropriate orders in this regard within a period of four weeks from the date of receipt of copy of this order.

18. In the result, the writ petition stands allowed. No costs. Consequently, connected writ miscellaneous petitions stand closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

mrm/msk

To

- 1.The Secretary to Government,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai - 03.
- 2.The Controller of Examination,
TNPSC Road, V.O.C. Nagar,
Park Town, Chennai - 03.
- 3.The Secretary to Government,
Personnel and Administrative Reforms Dept.,
Secretariat, Chennai - 09.

+1cc to Mr.M.Rajamani, Advocate, S.R.No. 74993

W.P.No.2080 of 2019

NRL(CO)
GN(17/10/2019)