

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:27.02.2019

Delivered on:21.03.2019

Coram

The Hon'ble Mr. Justice V.BHARATHIDASAN
and
The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.1931 of 2019

and

W.M.P.Nos.2148, 2149 and 2151 of 2019

G.Hemalathaa

... Petitioner

vs.

- 1.The State of Tamil Nadu,
rep.by its Secretary to Government,
Home (Courts-I) Department,
Fort St.George,
Chennai-600 009
 - 2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003
 - 3.The Controller of Examinations,
Tamil Nadu Public Service Commission,
Chennai-600 003
 - 4.The Registrar General,
High Court of Judicature at Madras,
Chennai-104
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus directing the respondents 1 and 3 to furnish the petitioner's answer sheet in all four Law Papers in the main written examination conducted by the 3rd respondent on 11.08.2018 and 12.08.2018, with reference to notification No.08/2018, dated 09.04.2018, issued by the second respondent and further direct the 3rd respondent to declare the result of the petitioner and to appoint the petitioner if she scored more marks than that of the last selected candidate in the Reservation category of Most Backward Class by waiving the oral test in the light of performance and marks obtained in written examination.

For Petitioner .. Mrs.S.T.P.Kuilmozhi
For Respondents .. Mr.E.Manokaran,A.G.P.for R1
Ms.C.N.G.Niraimathi for R2 and R3
Mr.B.Vijay for R4

ORDER

V.PARTHIBAN, J.

The petitioner is a graduate in B.L., completed the course in 2012, and enrolled as an advocate before the Bar Council of Tamil Nadu, on 01.09.2012. Her Enrollment number is 2217 of 2012. On 01.06.2013, she had passed the eligibility examination conducted by All India Bar Council. Thereafter, it appears that the petitioner had also completed her M.L. course during the academic years 2014 to 2016, at Dr.Ambedkar Government Law College, Chennai and obtained 64.5% of marks in her Post Graduation.

2.The second respondent/Tamil Nadu Public Service Commissioner (hereinafter referred to as 'Commission') published Notification No.08/18, dated 09.04.2018, inviting applications from the eligible candidates for filling up of 320 vacancies to the post of Civil Judge in Tamil Nadu State Judicial Services for the years 2014-15 to 2016-17. According to the petitioner she being qualified, she responded to the invitation and submitted her application and on acceptance of her application, the second respondent allotted her Registration No.170001156. Thereafter, she was issued with the Hall-ticket to appear for preliminary examination [objective type] on 09.06.2018.

3.The petitioner had participated in the preliminary examination and she was successful as one among 684 candidates. Thereafter, the petitioner was permitted to participate in the main examination, which was held on 11.08.2018 and 12.08.2018. The petitioner has written all the four papers in the main examination on those days and having done exceedingly well, she was expecting that she would be declared successful.

4.On 19.09.2018, the results were published for the main examination, in which, the petitioner found her Registration number was missing and she was at a lose to understand as to why she was not declared successful. Thereafter, it appears that the Commission had conducted oral test/interview from 27.09.2018 to 05.10.2018 and finally the Commission declared the results of successful candidates on 05.12.2018, in their web-site. It appears that the petitioner

had verified her marks in the meanwhile, however, she could not find the marks obtained by her in the main examination, as the same had not been displayed in the Commission's web-site.

5. According to the petitioner, she belongs to Most-Backward Community and she came to understand that some of the successful candidates had performed less than the petitioner and therefore, she submitted her representation to the Commission on 05.12.2018, seeking to furnish the details of the marks obtained by her in the main examination. Although initially there was no response to her representation, but after the petitioner insisted for furnishing of the information, finally the Commission, in its reply dated 07.01.2019, conveyed that Law Paper-I written by the petitioner was invalidated in view of violation of instructions issued by the Commission under Paragraph No.22(1)(II) to the candidates who participated in the examination. According to the petitioner herein, the Commission had issued as many as 13 instructions in Paragraph No.22, containing various guidelines for the candidates to appear in the subject examination, but to her knowledge, she had not violated any of the conditions and therefore, she was shocked to find her Law Paper-I was invalidated.

6. In the above circumstances, the petitioner has approached this Court seeking the issue of writ of mandamus to furnish her answer sheets in all four papers in the main written examination and consequently declare her result and appoint her if she had secured more than the marks obtained by the last selected candidate in the category, in which the petitioner belongs to.

7. The learned counsel appearing for the petitioner would strenuously contend that the petitioner has not violated any of the conditions stipulated by the Commission while participating in the main written examination, but however, she was at a lose to understand as to the basis of the action of invalidating her paper (Law Paper-I) by the Commission. Therefore, the learned counsel urged this Court to direct the Commission to produce the petitioner's answer sheet in respect of Law-paper I, so that the Court could verify the action taken by the Commission and ascertain whether there was any violation by the petitioner as contended by the Commission.

8. Considering the request made by the learned counsel for the petitioner, this Court had directed the Commission to produce the answer sheet of the petitioner in order to find out

whether there were any bona fide mistakes either on the side of the petitioner or on the side of the Commission. The Commission has produced the answer sheet for Law paper-I and this Court perused the same.

9. On perusal of the answer sheet, it is found that the petitioner has underlined in several places in the answer sheet by pencil, which according to the Commission, is impermissible and the same is violative of instruction No.22(1)(II). Instruction No.22(1)(II) issued to the candidate by the Commission is reproduced hereunder:

"II. Usage of Whitener, sketch pens, pencil, colour pencils, multi colour pens, Crayons or any other writing materials, for any purpose."

According to the Commission, such underlining or marking by the candidates would identify his/her answer sheet and therefore, the same is prohibited by the Commission.

10. After perusal of the answer sheet, this Court enquired the learned counsel appearing for the Commission as to whether such underlining or marking was therein in other papers written by the petitioner and the answer was no. So, according to the Commission, only in Law Paper-I, the petitioner had underlined several passages in the answer sheet and therefore, the petitioner's paper was invalidated as per the instructions and the Commission could not be found fault with for such action taken against the petitioner.

11. On a further enquiry with the Commission as to whether the petitioner had enjoyed any undue advantage in view of her marking the answer sheet in pencil, the reply of the Commission was no.

12. Although initially the underlining in pencil in Law-Paper I had been stoutly denied by the petitioner, but when the counsel for the petitioner and the petitioner herself were confronted by this Court about the factum of her underlining several passages in the answer sheet, after perusal of the answer sheet, the candidate has replied that may be inadvertently and out of anxiety, she had marked certain portions in pencil in order to highlight the importance of the answers. According to the petitioner, such underlining or marking in pencil in respect of one paper alone was unintentional and was not intended to derive any undue advantage

or it was not motivated to cause any identification of her candidature. Therefore, on behalf of the petitioner it is submitted that the Court may take a considerate or lenient view and condone the inadvertent act of the petitioner, since the act is only in respect of one paper alone out of four papers written by her in the main examination.

13.This Court has also directed the Commission to produce the mark sheet in respect of all papers in the main written examination and the same was produced and from the same it is seen that the petitioner has scored more than the minimum qualifying marks in all the papers, including the paper invalidated, in which event, but for the invalidation, the petitioner would have been qualified to be called for the interview i.e. viva-voce, which is the final stage of selection. The marks secured by the petitioner in each of the papers is as follows:

Paper	Marks	Remarks
Translation Paper	47.5	
Law Paper-I	45	Invalidated
Law Paper-II	35	
Law Paper-III	41	

14.On behalf of the petitioner, the learned counsel would submit that in similar circumstances, a Division Bench of this Court has passed an order in W.A.Nos.1408 and 1045 of 2009, dated 12.10.2019. He would draw the attention of this Court to Paragraph Nos.3 to 8, which are extracted hereunder.

"3.It is not disputed that the respondent herein used only one of the three colour inks which are permitted under Instruction No.12, namely, blue, black or blue-black. The submission of the Learned counsel appearing for the Tamil Nadu Service Commission is that, whereas the respondent used one of these three colours for writing the answers, he used another colour for underlining some of the answers.

4.As far as this submission is concerned, there is no specific instruction laying down that the candidate must use the same colour ink for underlining, which he has used for writing the answer. Instruction No.12 is very clear, in that it only lays down that for answering the questions, the candidates must use only one of the three colours of ink.

5.As far as Instruction No.16(i) is concerned, it speaks of what kind of pen that should and should not be used by the candidates for underlining etc. It is not the case of the Commission that the respondent herein has used any pen other than the one which is permitted either under Instruction No.16(i) or under Instruction No.12, when read along Instruction NO.16(i). Instruction NO.16(i) only provides for the kind of pens that are to be used for underlining. The respondent herein has not used any pen which is prohibited under Instruction No.16(i); he has used only the pen which is permitted therein. That being so, the learned single Judge took the view that the interpretation being placed on Instruction No.12 by the Commission was a harsh interpretation and merely because that respondent has used one of the other three colours for underlining some answers, his paper should not have been invalidated. The learned single Judge has, therefore, allowed the writ petition filed by the respondent in W.A.No.1408 of 2009, whereby his paper has been evaluated.

6.We have noted the submissions of Ms.C.N.G.Ezhilarasi, learned counsel appearing for the Tamil Nadu Public Service Commission, who is also supported by Mr.R.Singaravelan, learned counsel who has filed the other appeal, viz., Writ Appeal No.1045 of 2009, challenging this very judgment of the learned single Judge, as instructed by another candidate who is next in line to the respondent in W.A.No.1408 of 2009.

7.The submission of Ms.C.N.G.Ezhilarasi as well as Mr.R.Singaravelan is that the same colour ink must be used for underlining, as the one that is used for writing the answers. There is no specific provision in that behalf and that being so, we will not read anything additional in Instruction No.12 when it is not so specifically provided in the instructions. By reading anything additional, the candidates will be required to submit themselves to a further restriction, which is not provided in the instructions and we do not think that the learned single Judge was wrong in any way in not reading any such further restriction in Instruction No.12. The learned Single Judge has allowed the writ petition filed by the respondent in W.A.No.1408 of 2009, whereby his paper has to be evaluated.

8.We do not find any reason to interfere with the order passed by the learned single Judge. Both these writ appeals are, therefore, dismissed, but there shall be no order as to costs. Consequently, M.P.Nos.1 and 1 of 2009 in the respective writ appeals are closed."

15.However, this Court is unable to accept the reliance placed by the learned counsel for the petitioner, since the Division Bench was concerned with the situation where a particular act by the candidate concerned was not prohibited by the Commission. Whereas, in this case, as per instruction No.22 (1)(II), which is extracted above, there is a prohibition and the candidates, who participated in such examination, are supposed to read all the instructions before they sit for examination.

16.The learned counsel would also rely on a decision of the learned single Judge of this Court, dated 24.03.2009 in W.P.No.21873 of 2008. In that case, the learned Judge of this Court has held in similar circumstances that such invalidation was untenable. The learned counsel would draw the attention of this Court to Paragraph Nos.9 and 10, which are extracted hereunder:

"9. However, I am unable to accept the said contention raised by the learned counsel appearing for the respondents for more than an reason which are set out here under:-

(i) No doubt, the conditions in para 12 of the Commission's Instructions to candidates appearing for the competitive examinations, states that the persons writing examinations are permitted to use only one colour ink for answering the question papers. That does not mean even the underlining of certain portions shall not be done by any colour ink. The permitted three colour inks are Blue, Black or Blue Black. The petitioner for answering the questions had used the Blue colour ink, but underlining has been made in one paper by using Black ink. Answering the questions in one colour ink and underlining the same in another colour ink cannot at any stretch of imagination could be said that the petitioner had used two different colour inks for answering the questions.

(ii) Para 16(i) of the Commission's instructions referred to above prohibits use of colour pens, sketch pens, colour pencils. It is not the case of the respondents that the petitioner had used colour pencils other than Blue or Black or sketch pens or colour pencils. Hence, I am of the considered view that the petitioner had not violated the conditions enumerated in para 16(i) of the said instructions.

(iii) For highlighting certain portions, the petitioner used black colour ink in one paper by answering the questions in blue ink and he had not answered in two different colour inks as contended by the respondents.

The above conclusions that have been arrived at by me would indicate that the invalidation of the answer sheets of the petitioner is totally untenable.

10. In view of the above stated position, I am inclined to direct respondents 1 to 3 to revoke the decision of the invalidation of two answer papers i.e., Law Paper I and Law Paper II and evaluate the same in respect of the petitioner bearing Registration No.01704004 and declare the result and if the petitioner succeeds in the examination, he shall be selected by them for the post of Assistant Public Prosecutor Grade II and the writ petition stands allowed. Respondents 1 to 3 are directed to carry out the directions within a period of one month from the date of receipt of a copy of this order. No order as to costs. Consequently, connected miscellaneous petitions are closed."

17. The learned counsel for the petitioner would therefore implore this Court to pass similar direction as passed by the learned Judge of this Court in the above Writ Petition.

18. Per contra, the learned counsel appearing for the Commission would stoutly oppose grant of any relief to the petitioner, since the petitioner's act of marking several passages in the answer sheet in pencil was clearly in violation of the specific instructions issued by the Commission to all the candidates. Such instructions issued by the Commission have to

be scrupulously observed by all the candidates and any infraction of such instruction will automatically lead to invalidation of the paper concerned. Once the petitioner has violated the instructions, which are mandatory in nature, the question of condoning her act would not arise, as that would only open pandora's box. According to the learned counsel, very many candidates, whose papers were invalidated on their violating the instructions, would also come forward for condonation of their acts. Therefore, it is not expatiate to condone such act by this Court, even on equitable consideration.

19. Heard the learned counsels for the petitioner as well as for the Commission and also for the 4th respondent.

20. The point for consideration by this Court is as to whether the act of the petitioner in violating instruction No. 22 (1) (II) can be condoned and whether the same would make her eligible to participate in the final stage of selection i.e. interview viva-voce.

21. From the above narrative, it is clear that the petitioner has committed the violation only in respect of Law Paper-I alone and not any other subjects in the main examination. Moreover, even according to the Commission, the petitioner appeared to have not derived any undue advantage in view of her marking answer sheet in pencil. Further, it is not the case of the Commission that the petitioner's identity was revealed in view of underlining several passages in the answer sheet. When such is the position, whether the petitioner can be held guilty for wantonly violating the instructions given by the Commission to the candidates. In this regard, this Court finds that the petitioner has secured qualifying marks in other subjects and also in the subject where the paper was invalidated by the Commission. According to the petitioner, such marking in pencil was due to inadvertence and anxiety and that cannot be too seriously viewed by the Commission in order to disqualify her from further participation.

22. No doubt, such argument advanced on behalf of the petitioner, normally is unacceptable, since all the candidates, who participated in such examination, are required to be thorough with the instructions and any violation of instructions would only result in invalidation of answer sheets. At the same time, considering the fact that the petitioner herein has unwittingly and inadvertently underlined some portions in the answer sheet in pencil, probably, without knowing the

implications of such act. Though the act was committed intentionally or otherwise cannot be the basis for deciding the case of this nature, but at the same time, this Court cannot also ignore that a candidate, who has been otherwise qualified, can be disqualified on the basis of his/her solitary act of inadvertence.

23. This Court, in consideration of the totality of circumstances of the case, is of the considered view that a solitary mistake committed by the petitioner in one paper alone ought not to result in her disqualification to participate in the next mode of selection, as the invalidation by the Commission is too severe a consequence that need not befall on the petitioner in the circumstances of the case. This conclusion is reached by this Court on the basis that the Court being satisfied on enquiry and verification with the Commission that the petitioner did not derive any undue advantage in the subject paper because of her inadvertent act and her candidature was also appeared to have not been revealed in order to achieve any oblique purpose. Therefore, this Court is of the considered view that the petitioner ought not to be punished disproportionately for a simple error or mistake committed by her, as reaching the final stage of selection is invaluable and it is also probably a dream come true for the petitioner.

24. In the above circumstances, this Court, though is in agreement with the submissions made on behalf of the Commission that the violation of instructions cannot be taken lightly, as that would open Pandora's box of such claims being agitated before this Court, at the same time, this Court can take a pragmatic and compassionate view by applying the principle of equity and justice in favour of the petitioner. The order/direction passed in this writ petition shall not be cited as a precedent for any other such claim.

25. In the said circumstances, although the petitioner is not entitled to succeed as a matter of right, but on a equitable consideration, this Court feels that the petitioner could be considered for grant of relief in the peculiar facts and circumstances of the case.

26. For the above said reasons, the second respondent/Tamil Nadu Public Service Commission is directed to declare the result of Law Paper-I, in the main written examination, of the petitioner in the subject selection, by ignoring earlier action of invalidating the same and if the

petitioner is otherwise qualified in other subjects, she may be called for interview/oral test as a special case and if she is found fit in all respects, on par with the other selected candidates, she may also be selected along with others, for appointment to the post of Civil Judge in the Tamil Nadu State Judicial Services. The second respondent Commission is directed to complete the exercise by declaring the result of the petitioner in respect of Law Paper-I and thereafter, call the petitioner for interview/oral test and announce the final result of the petitioner within a period of four weeks from the date of receipt of copy of this order.

The writ petition is ordered accordingly. No costs.
Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To

1. The Secretary to Government,
Home (Courts-I) Department,
Fort St. George,
Chennai-600 009
 2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 003
 3. The Controller of Examinations,
Tamil Nadu Public Service Commission,
Chennai-600 003
 4. The Registrar General,
High Court of Judicature at Madras,
Chennai-104
- +1 cc to M/s.S.T.P.Kuilmozhi, Advocate, S.R.No.26755 (25/03/19)
+2 cc to M/s.S.T.P.Kuilmozhi, Advocate, S.R.No.26755 (26/03/19)
+1 cc to the Government Pleader, S.R.No.27452

Order in
W.P.No.1931 of 2019

GP (CO)
SSM(25/03/2019) (26/03/2019)