

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.02.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.3525 of 2019
and
W.M.P.No.3840 of 2019

K.Subramaniyan

...Petitioner

..Vs..

1.The Chairman, TANDEGCO
NPKRR Maaligai,
144, Annasalai, Chennai - 2.

2.The Chief Engineer Personnel, TANDEGCO
NPKRR Maaligai,
144, Annasalai, Chennai - 2.

...Respondents

Prayer:Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to consider petitioner application as MBC Priority category for the post of Technical Assistant as per the notification No.1/2016 dated 28.02.2016 in the respondent Board.

For Petitioner : Mr.B.Manoharan

For Respondents : Mr.P.R.Dhilipkumar
Standing Counsel for Electricity Board

O R D E R

The relief sought for in the present writ petition is to direct the respondents to consider the writ petitioner's application as MBC priority category for the post of Technical Assistant as per the notification No.1/2016 dated 28.02.2016 in the respondent Board.

2. The writ petitioner passed Diploma in Electrical and Electronics Engineering and applied for the post of Technical Assistant/Electrical (EEE) as per the notification No.1/2016 dated 28.02.2016 through online. As per 11(g)(3), the writ petitioner is eligible to avail the priority quota as the land belongs to the writ petitioner family was acquired and the respondent Board is the beneficiary at the time of submitting

the application through online. The petitioner failed to upload the certificate issued by the Land Acquisition officer for claiming priority quota. However, the writ petitioner assigned Registration No.1515220781. The petitioner appeared for the written test held on 28.08.2016 and secured 6.14 marks.

3. The learned counsel for the petitioner states that the interview process is in progress. Thus, the priority certificate subsequently submitted by the writ petitioner is to be considered and he must be treated as a priority candidate for the purpose of selection to the post of Technical Assistant in the respondent Board.

4. The learned counsel appearing on behalf of the respondent Board states that the writ petitioner had not submitted the priority certificate at the time of submission of his application through online. The writ petitioner has submitted the priority certificate after submission of application and during the pendency of the selection process. Thus, as per the terms and conditions he is not entitled to be considered under the priority category.

5. The learned counsel appearing on behalf of the writ petitioner submitted the orders passed by the Hon'ble Division Bench of this Court, dated 05.02.2018 in W.A(MD)No.170 of 2018 & CMP.(MD)No.934 of 2018, which reads as follows:

"5. The last date for submission of the application was on 22.02.2017. The Writ Petitioner/Respondent, who is an Ex-serviceman, got discharged on 03.10.2016 and however, did not enclose the Certificate to that effect along with the application and he has obtained the same only on 24.03.2017, that is, after the last date of the submission of the application. However, before Certificate verification done, he has submitted a representation enclosing the said Certificate and it was not considered and, therefore, he came forward to file the said Writ Petition. The learned Judge, after taking note of the factual aspect and also considering the decisions rendered by the Hon'ble Supreme Court of India in Charles K.Skaria vs. Mathew [AIR 1980 SC 1230] and Dolly Chhanda vs. Chairman, JEE [2005(9) SCC 779] as well as this Court in Premanand vs. The State of Tamil Nadu [1995(2) MLJ 325], Dr.A.Rajapandian v. State of Tamil Nadu [2006(5) CTC 529], Secretary, TNPSC v. M.Chitra [2010(2) MLJ 146] and C.Stella Mary v. TNPSC [2009(6) MLJ 1211], held that the failure to produce Certificate along with the application before finalization of the list of candidates, is not fatal

for the reason that the said clauses cannot be termed as mandatory in nature and admittedly, Certificate has been produced before the Certificate verification done on 01.08.2017 and, therefore, allowed the Writ Petition.

6. In *Dolly Chhanda vs. Chairman, JEE* [2005(9) SCC 779], the facts of the case would disclose that the appellant therein passed Higher Secondary Examination and she was desirous of joining a Medical Course and accordingly, appeared in the Joint Entrance Examination conducted for the year 2003 under the reserved MI category being a daughter of an Ex-serviceman who was discharged from the armed forces on the ground of permanent disability. She was called for counselling and during the course of scrutiny, it was revealed that in the Certificate dated 29.06.2003 given to her father by the Zilla Sainik Board regarding Column 3 which pertained to "disabled/killed in war/hostilities", the words "not eligible" were written and on that score, her application was rejected. Thereafter, the appellant therein approached the first respondent with the correct Certificate, but no action was taken and, therefore, came forward to file the Writ Petition and it was dismissed by the High Court of Orissa on the ground that at the time of counselling on 07.07.2003, the Certificate furnished by the appellant did not bear any testimony that her father being a personnel of the armed/paramilitary forces of Orissa had been disabled in action. Therefore, the matter reached the portals of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has taken into consideration the Charles K. Skaria's case (cited supra) and observed 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."

and accordingly, allowed the appeal filed by the candidate.

7. In the considered opinion of the Court, the said decision would squarely apply to the facts of this case for the reason that it is not in serious dispute that the respondent is an Ex-serviceman and however, at the time of submission of the application, he was not able to get the said Certificate on time and having obtained the same, submitted the same before the Certificate verification on 01.08.2017. It is also pertinent to point out at this juncture, at the time of Certificate verification, admittedly, the selection process was not over and as such, no rights of the third parties also got intervened. In the considered opinion of the Court, the learned Judge has correctly applied the legal principles and rightly allowed the Writ Petition. This Court finds no error or infirmity in the reasons assigned by the learned Judge, while allowing the Writ Petition.

8. In the result, the Writ Appeal stands dismissed confirming the order dated 22.12.2017 made in W.P.(MD) No.19589 of 2017. However, in the facts and circumstances of the case, there is no order as to costs. Consequently, the connected miscellaneous petition is closed."

6. Undoubtedly, the present writ petition on hand, the writ petitioner had not submitted the priority certificate along with the application. However, the said priority certificate has been submitted subsequently on 15.03.2017 itself. In view of the fact, that the writ petitioner had already submitted the priority certificate on 17.03.2017 and during the relevant point of time the selection process had not been completed, this Court is inclined to consider the case of the writ petitioner and accordingly, the following order is passed:

The respondents are directed to allow the writ petitioner to participate in the interview process and his selection may be considered under the priority quota as per the certificate produced by him on 15.03.2017.

7. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Chairman, TANDEGCO
NPKRR Maaligai,
144, Annasalai, Chennai - 2.

2.The Chief Engineer Personnel, TANDEGCO
NPKRR Maaligai,
144, Annasalai, Chennai - 2.

+1cc to M/S.B.Manoharan, Advocate sr.13283
+1cc to M/S.P.R.Dhilipkumar, Advocate sr.13310

W.P.No.3525 of 2019
and

W.M.P.No.3840 of 2019

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srg 13/03/2019

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