

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE Ms.JUSTICE P.T.ASHA
W.A.Nos.1354 and 1356 of 2019

The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
Park Town,
Chennai 600 003

... appellant in both writ appeals

Vs

D.Ashok Kumar ... respondent in W.A.No.1354/2019

J.Prema ... respondent in W.A.No.1356/2019

Appeals filed against the order passed by this Court dated 27.11.2018 in WP No.21775 of 2018 and 23363 of 2018.

Prayer in WP No.21775 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorarified Mandamus Calling for the records of the notification dated 14.08.2018 issued by the respondent which was published in website by rejecting petitioners Registration No.160603187 as not satisfied the eligibility condition as per the norms stipulated in the Notification and quash the same direct the same direct the respondent to include petitioners Registration No.160603187 dated 04.08.2017 in the original verification/ Counselling notification dated 14.08.2018 scheduled on 27.08.2018 for the posts included in Combined Civil Services Examination (Non-Interview Posts) (Group-II A Services) 2017-2018 code No.004

Prayer in WP No.21775 of 2018:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the Notification dated 14.08.2018 issued by the Respondent which was published in website by rejecting petitioners Registration No.160603224 as not satisfied the eligibility condition as per the norms stipulated in the Notification and quash the same direct the respondent to include petitioners Registration No.160603224 dated 04.08.2017 in the original verification /Counselling notification dated 14.08.2018 scheduled from 27.08.2018 till 12.9.2018 for the

posts included in Combined Civil Services Examination (Non-Interview posts) (Group - II A Services) 2017-2018 code NO.004

For appellant : Mr.Ayyadurai, Senior Counsel,
for Thiru.M.Devendran

For Respondent : Mr.Vimal B.Crimson

COMMON JUDGMENT

This is the case of two applicants who successfully cleared the written examination conducted by Tamil Nadu Public Service Commission, and got their names included in the select list, but, however, appointment orders were not given on account of the mistake in declaring the date of birth in the application form.
W.A.No.1354 of 2019:-

2. The respondent who is an engineering graduate, submitted application for appointment to the Group II Services, pursuant to the notification dated 14 August 2018 issued by the Tamil Nadu Public Service Commission. The appellant was permitted to appear in the written examination. However, during the course of certificate verification, it was found that his date of birth was wrongly written as 8 September 1990 instead of 8 October 1990. Similarly, higher Secondary School Certificate was mentioned as 4654793 instead of 4645793. In view of the typographical error, TNPSC refused to entertain the candidature of the respondent.

3. The respondent filed a Writ Petition in W.P.No.21775 of 2018 challenging the rejection of his candidature. The respondent was subjected to the selection process pursuant to the interim order passed by the learned Single Judge. He was provisionally selected for appointment to the post of Assistant in the Government Secretariat. However, he was not given appointment. The learned single Judge ultimately allowed the Writ Petition. The said order is challenged in W.A.No.1354 of 2019.

W.A.No.1356 of 2019:

4. The respondent is a Post Graduate in Commerce. She hails from a remote area in the State of Tamil Nadu. The respondent submitted application pursuant to the notification issued by the TNPSC. The application was for the post included in the Combined Civil Services Examination. She was permitted to take part in the written examination. Subsequently, she was called for certificate

verification. It was found that her date of birth was wrongly recorded as 5 June 1985 instead of 6 June 1985. The TNPSC taking into account the error in the application, refused to include her name in the merit list. The respondent therefore filed a Writ Petition in W.P.No.23363 of 2018.

5. The candidature of the respondent was considered on the strength of the interim order passed by the writ court. She was provisionally selected for appointment to the post of Assistant in the Forest Department. However, appointment order was not issued on account of the pendency of the Writ Petition. The learned Single Judge finally allowed the Writ Petition. The said order is challenged in W.A.No.1356 of 2019.

Summary of submissions:-

6. The learned Senior counsel appearing for the appellants contended that the candidates were given sufficient time to correct the mistakes in the application form. According to the learned Senior counsel, the respondent in the respective appeals submitted applications on the last date. It was a defective application as the particulars relating to the birth were not recorded correctly. In view of the conditions incorporated in the notification, defective applications are liable to be rejected without notice to the parties. The learned Senior Counsel contended that the provisional selection of the respondent subsequently would not cure the initial defect of submitting a defective application.

7. The learned counsel for the respondent placed reliance on a judgment of the Delhi High Court in Ajay Kumar Mishra vs. Union of India, dated 23 December 2016 in W.A.(C)No.11642/2016. It was also a case of error in typing the date of birth in the online application. The Division Bench opined that it was not the case of the State that candidates derived any undue advantage by entering wrong date of birth in the online application. The Division Bench therefore directed the State to accept the application in spite of a wrong date of birth entered in the application.

Discussion :-

8. The notification issued by the Tamil Nadu Public Service Commission contain a clear statement to the effect that defective applications would be rejected summarily. The applicants were required to fill up the correct details, including the age and date of birth.

9. It is a matter of record that the respondent in the respective appeals wrongly recorded their date of birth in

the application. Therefore, it was a defective application. The applicants were given time till the last date of application for making corrections. However, in the subject case, the initial application through online itself was submitted only just before the last date for submission of the completed application. Therefore, it was not possible for the respondent to correct the mistake at a later point of time, within the time prescribed for submission of applications.

10. The notification issued by the TNPSC made it mandatory to fill the correct particulars. It was very clearly provided in the general instructions to the candidates that applications with incorrect particulars will be liable for rejection. Therefore, it is very clear that incorrect particulars relating to the date of birth also would result in rejection of the application.

11. The TNPSC is a body entrusted with the task of conducting recruitment for various posts. There would be large number of applications for appointment to a particular post. It would not be possible for the TNPSC to extend time for correction of mistakes. Merely because candidates were permitted to take part in the written examination, it cannot be said that the application cannot be rejected at a later point of time on account of the material defect.

12. The learned Single Judge proceeded as if the mistakes were trivial and as such, the same should be condoned. The question is not as to whether the mistake was trivial or major. It was a case of non compliance with the instruction given by the TNPSC. The candidates were required to fill up the form correctly. The candidates were also given sufficient time to rectify the mistake. In case mistakes were not rectified even within the stipulated period, it would not be possible at a later point of time either to correct the entries or to contend that the mistakes were trivial in nature. We are therefore of the view that the learned Single Judge was not correct in allowing the Writ Petitions for the reasons mentioned in the common order.

13. The Hon'ble Supreme Court in T.Jayakumar vs. A.Gopu and another, 2008(9) SCC 403, observed that calling a candidate for interview would not operate as estoppel and still his application can be rejected on the ground of material defect. The relevant observation reads thus:-

12. We are not aware of any principle of law under which once a candidate is allowed participation in the selection

process, the selection authority is precluded from examining whether his application was complete, in order, within time or otherwise acceptable. A defect in the application form that renders the candidate ineligible might be overlooked in the initial screening and as a result he may be called for interview and may get a chance to take part in the selection process but that alone does not mean that the candidate cannot be held ineligible for selection at a later stage once the defect in the application comes to light.

14. The further question is as to whether we should set aside the order passed by the learned Single Judge in its entirety in spite of the selection of the respondent in the respective appeals for appointment to the post of Assistant.

Discretionary Jurisdiction:

15. The jurisdiction under Article 226 of the Constitution of India is extraordinary in nature. It is otherwise called as equity jurisdiction. The Court is not bound to exercise the discretion in favour of a party, merely because law is in its favour. In appropriate cases, it is open to the Court to refuse relief after declaring the law on the subject. The Court can also mould the relief to do substantial justice.

16. The Supreme Court in *State of Maharashtra and others v. Prabhu* (1994) 2 SCC 481 indicated the scope and ambit of equity jurisdiction.

5. It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.

17. The Supreme Court in *G.M., O.N.G.C. Ltd., v. Sendhabhai Vastram Patel* JT 2005(7) SC 465 observed that it is not always necessary to strike down a wrong decision only because it would be lawful to do so. The Supreme Court said:

" 23. It is now well-settled that the High Courts and the Supreme Court

while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof may not exercise the same in appropriate cases. While exercising such jurisdiction, the superior courts in India even may not strike down a wrong order only because it would be lawful to do so. A discretionary relief may be refused to be extended to the Appellant in a given case although the Court may find the same to be justified in law."

18. The Supreme Court in *Ritesh Tewari v. State of U.P.*, (2010) 10 SCC 677, explained the discretionary and equity jurisdiction in the following words:

"26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements

and not in a casual and cavalier manner. "

19. The Supreme Court in *Eastern Coalfields Ltd. v. Bajrangi Rabidas* (2013) 12 Scale 69 held that jurisdiction under Article 226 of Constitution of India being discretionary is not to be exercised whenever there is an error of law. The Supreme Court observed:

"17.It is well settled in law that jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power of the High Court is required to be exercised to reach injustice wherever it is found. In *Sangram Singh v. Election Commissioner, Kotah and another*, (1995) 2 SCR 1, it has been observed that jurisdiction under Article 226 of the Constitution is not to be exercised whenever there is an error of law. The powers are purely discretionary and though no limits can be placed upon that discretion, it must be exercised along recognized lines and not arbitrarily and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in such class of cases unless substantial injustice has ensued or is likely to ensue. That apart, the High court while exercising the jurisdiction under Article 226 of the Constitution can always take cognizance of the entire facts and circumstances and pass appropriate directions to balance the justice. The jurisdiction being extraordinary it is required to be exercised keeping in mind the principles of equity."

Conclusion:-

20. We are therefore of the view that the order passed by the learned Single Judge does not call for interference on account of the ultimate selection of the respondents. The respondents were given high ranking in the selection. They are entitled to an order of appointment but for the mistake in filling up the application. We are therefore of the view that this is a fit case to extend the discretionary jurisdiction to do substantial justice.

21. We therefore allow the Writ appeals filed by the TNPSC holding that the mistakes in filling up the application would result in the rejection of the applications. However, we refrain from interfering with the ultimate direction given by the learned Single Judge that TNPSC shall allot posts to the respondents taking into account their provisional selection. We direct TNPSC to operate the provisional select list and appoint the respondents in the respective posts as per their eligibility. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this judgment.

22. The intra court appeals are disposed of with the above direction. No costs. Consequently, C.M.P.Nos.9291 and 9293 of 2019 are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To,
The Secretary,
Tamil Nadu Public Service Commission,
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Park Town,
Chennai 600 003

+2ccs to Thiru.M.Devendran , Advocate SR.No. 58765,58764
+2ccs to Mr.Vimal B.Crimson , Advocate SR.No. 58717,58718

W.A.Nos.1354 & 1356/2019

A.SK(05/08/2019)

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