

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.20952 of 2018 and
WP.No.28596 of 2019
and

WMP.Nos.28345 of 2019, 24595 & 24596 of 2018

P.Jagadeesan ... Petitioner
(in both WPs)

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
School Education Department,
Secretariat, Fort St. George, Chennai - 9.
2. The Director of School Education,
College Road, DPI Campus,
Chennai 600 006.
3. The Chief Educational Officer,
Namakkal, Namakkal District.
4. The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maaligai,
College Road, Chennai 600 006. ... Respondents
(in both WPs)

Common Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents from implementing the revised provisional selection list issued by the 4th respondent Teacher Recruitment Board (TRB) for the post of Special Teacher in Sewing dated 09.09.2019 and directing the respondents to consider the petitioner for selection and appointment to the post of Special Teacher in Sewing based on the marks secured by the petitioner under BC category in pursuant to the Notification No.05/2017 dated 26.07.2017 issued by the 4th respondent Teacher Recruitment Board without reference to the discrepancy in the application form relating to the year of birth of the petitioner, as per the representation submitted by the petitioner dated 21.09.2017.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.V.Annalakshmi
Government Advocate for
R1 to R4.

COMMON ORDER

This writ petition has been filed for a Writ of Mandamus forbearing the respondents from implementing the revised provisional selection list issued by the 4th respondent for the post of Special Teacher in Sewing, without considering the candidature of the petitioner.

2. The Teacher Recruitment Board (TRB) issued a notification dated 26.07.2017, calling for the selection and appointment to the post of Special Teacher in Sewing. The petitioner submitted his application through online mode. The petitioner was issued with the hall ticket to attend the examination conducted on 23.09.2017 and he had secured 61 marks in the examination. The petitioner noticed that his date of birth has been wrongly entered in the application as 25.07.1960 instead of 25.07.1980. Therefore, the petitioner gave a representation to the Teacher Recruitment Board (TRB) on 21.09.2017, by referring to the said mistake and requested for the alteration of the same to 25.07.1980. There was no response from the Teacher Recruitment Board (TRB).

3. Subsequently, the Teacher Recruitment Board (TRB) published the list of provisionally selected candidates in the post of Special Teacher in Sewing on 27.07.2018 and the name of the petitioner was not included in the selection list. The petitioner came to understand that the wrong mentioning of the date of birth was the reason for not considering the petitioner for selection to the post of Special Teacher in Sewing. Therefore, the present writ petition has been filed challenging the same.

4. Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner submitted that the petitioner possessed all the qualifications required for the post of Special Teacher in Sewing. The learned counsel submitted that the petitioner is hailing from a village and this is the first time he is submitting an application through online mode and therefore, he had to depend upon a computer centre within the village. The petitioner was not even aware of the fact that his date of birth was typed as 25.07.1960 instead of 25.07.1980. The learned counsel submitted that it was only a typographical error and there was no intention on the part of the petitioner to mislead

the respondent or to take any undue advantage by giving his date of birth as 25.07.1960.

5. The learned counsel in order to substantiate his submissions, relied upon the judgment of the Hon'ble Supreme Court of India in Dolly Chhanda Vs. Chairman, JEE and Others, 2005 (9) SCC 779 and judgment of the Division Bench of this Court in WP.No.42040 of 2016 dated 19.12.2016. The learned counsel also relied upon the judgment of the Union of India Ministry of Personnel, Public Grievances & pensions North Block, New Delhi, rep. by its Secretary & 2 others Vs. Guduru Raja Surya Praveen S/o G. Venkateswara Rao and another, 2015 SCC OnLine Hyd 437.

6. Per contra, Ms.V.Annalakshmi, learned counsel appearing on behalf of the Teacher Recruitment Board (TRB) submitted that the candidature of the petitioner was not considered on two grounds. The first ground was the mistake that was committed by the petitioner by showing a wrong date of birth. The second ground was that the petitioner had applied for the post under the BC Tamil Medium (TM) category and whereas, there are absolutely no documents to show that the petitioner had undergone his education through Tamil medium. The learned counsel submitted that while applying online, the petitioner must be careful in providing the details and if any wrong details are given in the application, that by itself will become a ground for the Teacher Recruitment Board (TRB) to reject the application and not consider the candidature of an applicant.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. The only issue that requires consideration in this case is as to whether the application submitted by the petitioner is liable to be rejected only on the ground that he has mentioned his date of birth as 25.07.1960 instead of 25.07.1980.

9. It will be relevant to take note of the judgment that has been cited by the learned counsel for the petitioner in this regard. The Division Bench of this Court in the case of C.Bhavani (referred supra), had an occasion to deal with a similar issue. The relevant portion of the judgment is extracted hereunder:-

"6. While it is true that every candidate who makes any claim for consideration for appointment to any post, must necessarily satisfy the eligibility requirement by making available the necessary proof in that regard. The actual production of the proof perhaps can be treated as procedural. In the instant

case, since the writ petitioner has possessed Bachelor Degree of Law, she has furnished the said particulars in the Online Application Form against the column of Educational Qualification-Degree. But however, by sheer inadvertence, she has not claimed BCA qualification in the Online Application Form against the column of Educational Qualification-Degree. Perhaps that was because she obtained BL degree after obtaining BCA degree, as BL degree can be obtained only after obtaining another Graduation Degree. But however, the fact remains that she has enclosed a copy of the BCA Degree certificate issued by the Madras University, in proof of her passing the said examination. Therefore, the present case can be treated as one of a non-substantive error committed by the writ petitioner. Hence, she can be treated to have claimed to possess BCA qualification as well, since the necessary certificate of having passed the said course has been enclosed to her application."

10. Similarly, it will be relevant to rely upon the judgment in M.Sundaramahalingam Vs. Tamil Nadu Public Service Commission, in W.P(MD)No.8213 of 2019 dated 09.05.2019. The relevant portion of the judgment is extracted hereunder:-

"2.The writ petitioner is a candidate who applied in response to the recruitment notification issued by the respondent Commission for filling up of the vacancies in the post of Assistant Director of Horticulture and Horticulture Officer for the year 2018. The writ petitioner was issued with a hall ticket and he came out successful in the written examination. However, the petitioner was not called for interview for the post of Assistant Director. The petitioner's candidature was rejected since his date of birth was wrongly given as 15.03.1992 instead of 15.11.1992 during certificate verification.

3.When the matter was taken up for hearing, Mr.D.Sivaraman, the learned Standing Counsel appearing for the respondent Commission pointed out that any error in entering the particulars in the application form will lead to automatic rejection of the candidature. He drew my attention to the "Instructions to the Candidates" which is enclosed in the Information Brochure that if any false or erroneous particulars have been entered in the application, the application itself is liable to be rejected.

5. Vide order dated 10.02.2018 in W.P.(MD)No.3212 of 2018, this Court had given relief to the writ petitioner therein in the following manner :

"Though the objections raised by the learned standing counsel for the respondent are well founded, this Court is inclined to follow the decision rendered by a learned Judge of this Court in respect of the very same recruitment process in W.P.No.2031 of 2018 dated 06.02.2018. In the said writ petition also, the candidate concerned had erroneously entered the date of birth in the online application. However, following the unreported decision of the Delhi High Court in Arkshit Kapoor Vs. Union of India and others (W.P.(C) No. 3721 of 2017 dated 31.07.2017), the lapse was condoned. In the present case also, the mistake is obviously inadvertent, not intended to get any gain or advantage. Therefore, following the order dated 06.02.2018 made in W.P.No.2031 of 2018, this Court directs the respondent to consider the candidature of the petitioner and also permit him to take part in the interview."

11. It will also be relevant to rely upon the judgment in D.Shruthi Vs. Secretary, Tamil Nadu Public Service Commission, Chennai, made in WP.No.3294 of 2018 dated 14.12.2018. The relevant portions of the judgment is extracted hereunder:-

"3. On 24.5.2015, the petitioner submitted her application vide Registration No.250158093 with the respondent through online. While submitting her application through online, inadvertently she has committed one typographical error, namely, in respect of 'date of birth in personal details', she has mentioned her date of birth as '15.6.1994' instead of '15.6.1993'. Immediately after coming to know the said mistake, while she appeared before the respondent for certificate verification, she gave a requisition letter on 18.8.2016, requesting the respondent to consider her request to rectify the said mistake committed by her in the online application form, as the same had occurred by oversight. Subsequently, the respondent conducted the preliminary examination on 26.7.2015 and thereafter on 20.5.2016, the result was published in 1:10 ratio

and the petitioner also appeared in the main examination, results were also declared on 27.9.2017 and she was also got selected.

7. In the present case also, when the petitioner after coming to know that her date of birth as '15.6.1993', which has been inadvertently mentioned by her as '15.6.1994' in her online application, gave a requisition letter to the respondent on 18.8.2016 with a request to consider her request for rectification of the said mistake committed by her, which clearly shows that only after realising the mistake, the petitioner, even before writing the main examination, has given her requisition letter to the respondent.

8. Therefore, the earlier order passed by this Court in W.P.No.2031 of 2018 dated 6.2.2018 will squarely apply to the case of the petitioner in the present writ petition also. In view of the same, the writ petition stands allowed. The respondent is directed to permit the petitioner participate in the oral interview, if she is otherwise eligible. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

12. It is clear from the above judgments that an element of flexibility must be available to ignore non-substantive errors committed by a candidate and which does not in anyway gives a candidate any undue or unfair advantage. The Court has to see whether the mistake committed while filling the application form is an accidental error or it was done intentionally. In the present case, the date and the month have been correctly stated and the only difference was with regard to the year of birth. Instead of stating it as 1980, it was wrongly typed as 1960. It is apparent that the mistake happened due to typographical error and petitioner himself brought to the notice of the Teacher Recruitment Board (TRB) when the hall ticket was given to him for taking the written examination. Therefore, this error can be condoned and the correct date of birth of the petitioner can be permitted to be stated in the application by carrying out the correction.

13. The next ground that has been raised by the Teacher Recruitment Board (TRB) is that the petitioner was selected in the BC category Tamil Medium (TM). However, the petitioner has not submitted any documents to prove that he has completed the course through Tamil Medium. The learned counsel for the petitioner brought to the notice of this Court the copy of the employment exchange registration card, wherein it is clearly found that the petitioner has completed his SSLC and HSC only

through Tamil medium. It is always open to the Teachers Recruitment Board (TRB) to get necessary particulars from the petitioner at the time of certificate verification. The objection raised by the learned Government Advocate does not go to the root of the matter, since unimpeachable document is available to show that the petitioner had completed his SSLC and HSC in Tamil medium.

14. In view of the above discussion, the petitioner has to succeed in these writ petitions and accordingly the 4th respondent is directed to permit the petitioner to participate in the selection to the post of Special Teacher in Sewing. The 4th respondent shall also permit the petitioner to give the correct particulars of his date of birth and necessary correction may also be done in the application form. It is always open to the 4th respondent to call for the details from the petitioner to prove that he has completed his studies through Tamil Medium.

15. These writ petitions are allowed in the above terms. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
State of Tamil Nadu, सत्यमेव जयते
School Education Department,
Secretariat, Fort St. George, Chennai - 9.

2. The Director of School Education,
College Road, DPI Campus,
Chennai 600 006.

3. The Chief Educational Officer,
Namakkal, Namakkal District.

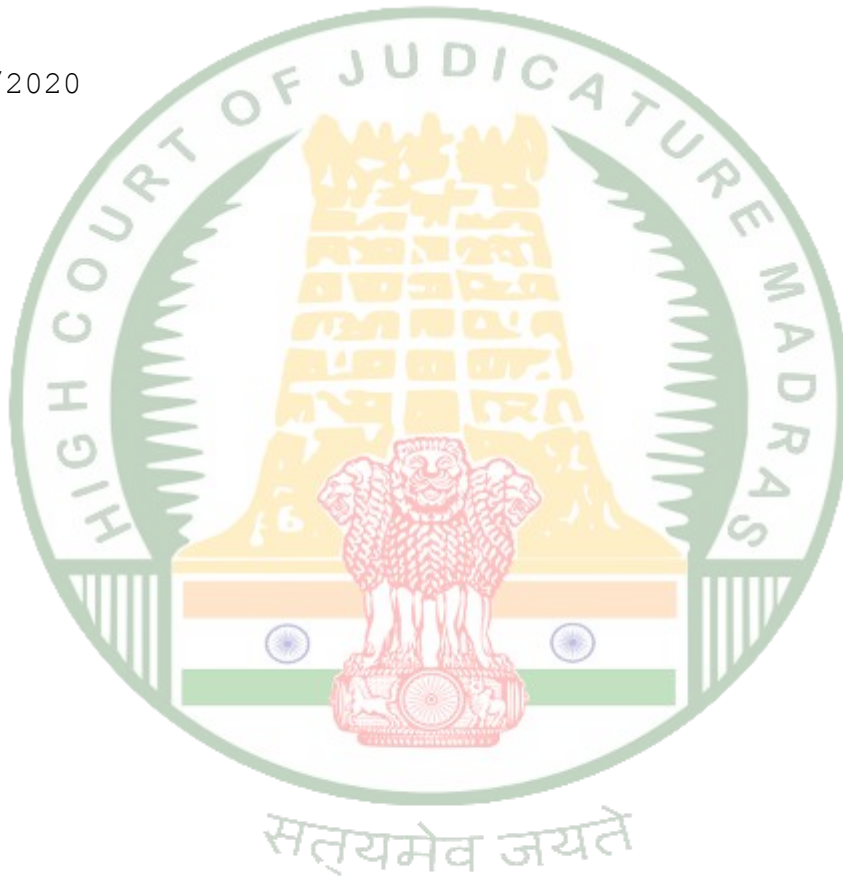
4. The Chairman,
Teachers Recruitment Board,
4th Floor, E.V.K.Sampath Maaligai,
College Road, Chennai 600 006.

+1cc to Mr.G.Sankaran, Advocate Sr.102006

+1cc to the Government Pleader Sr.102216 and 102219

W.P.Nos.20952 of 2018 and 28596 of 2019

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srg 27/01/2020



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