

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.04.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9341 of 2019
and
W.M.P.No.9904 of 2019

M.Susil Kumar

..Petitioner

vs

The Member Secretary,
Tamil Nadu Forest Uniformed Services Recruitment
Committee,
8th Down floor, Panagal Building,
Saidapet,
Chennai - 600 015

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Respondent to consider the application of the petitioner bearing Registration Number 18020039898 and provisionally select and appoint the petitioner to the post of Forest Guard with Driving License.

For Petitioner : Mr.T.Sellapandian

For Respondent : Ms.Thangavadhana Balakrishnan
Additional Government Pleader
(Forest)

O R D E R

The relief sought for in the present writ petition is for a direction to direct the Respondent to consider the application of the petitioner bearing Registration Number 18020039898 and provisionally select and appoint the petitioner to the post of Forest Guard with Driving License.

2.The learned counsel for the writ petitioner states that he possessed the qualification of B.Sc., Botany and he belongs to Scheduled Caste Community. The respondent invited applications for Recruitment to the Post of Forest Guard with Driving License, to fill up 157 Posts. Pursuant to the Recruitment

Notification, the writ petitioner submitted his application and participated in the process of selection.

3.The grievances of the writ petitioner is that though he is fully qualified and eligible for appointment to the Post of Forest Guard, the certificate of First Aid course produced by the writ petitioner before the competent authority was disputed at the first instance and the writ petitioner was directed to produce a First Aid Provisional Certificate issued by the Institute.

4.The learned counsel for the writ petitioner states that he produced the First Aid Provisional Certificate on 02.02.2019. The Provisional Certificate produced by the writ petitioner was also not considered by the respondent as there is no date in the Certificate.

5.The learned counsel for the writ petitioner further states that the non mentioning of the date cannot be held against the writ petitioner as he is not responsible for the same. The competent authority having any doubt, is at liberty to verify the genuinity of the Certificate issued by the Institute.

6.It is brought to the notice of this Court that the State Head of Operations of Ambulance under the Scheme of 108 Emergency, issued a certificate, stating that the writ petitioner has successfully completed the Emergency Medical Technician Refresher Training from 25th April to 29th April 2016.

7.This apart, the writ petitioner has produced the certificate issued by St.John Ambulance(India) and the said Provisional Certificate is also duly produced by the writ petitioner to the respondent.

8.The learned counsel for the respondent states that the Provisional Certificate was submitted by the writ petitioner belatedly and therefore, the respondent was not in a position to consider the case of the writ petitioner.

9.This Court is of an opinion that such a small delay cannot be held against the persons, who had already been selected.

10.The similar issue was considered by this Court in the case of K.Subramaniyan Vs. Chairman, TANGEDCO reported in 2019 (2) CTC 275 and the relevant paragraph 5 is extracted hereunder:-

"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."

11. In view of the legal principles settled, a mere delay in submitting the Provisional Certificate to the respondents cannot be a ground to reject the case of the writ petitioner for selection and appointment.

12. The learned Additional Government Pleader for the respondent states that the selection list has already been prepared and the appointment orders are yet to be issued. Out of 157 notified, 59 candidates are selected and therefore, this Court is of an opinion that there may not be any impediment for the respondents to consider the name of the writ petitioner based on the Provisional Certificate produced by him with some delay.

13. In the present case on hand, the writ petitioner had already selected as he is fully qualified. Thus, the Certificate produced by the writ petitioner is directed to be accepted and accordingly, his name is also to be considered for selection for appointment to the Post of Forest Guard and issue appointment order, if he is otherwise eligible and qualified in accordance with the Rules in force.

14. With these observations, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Assistant Registrar

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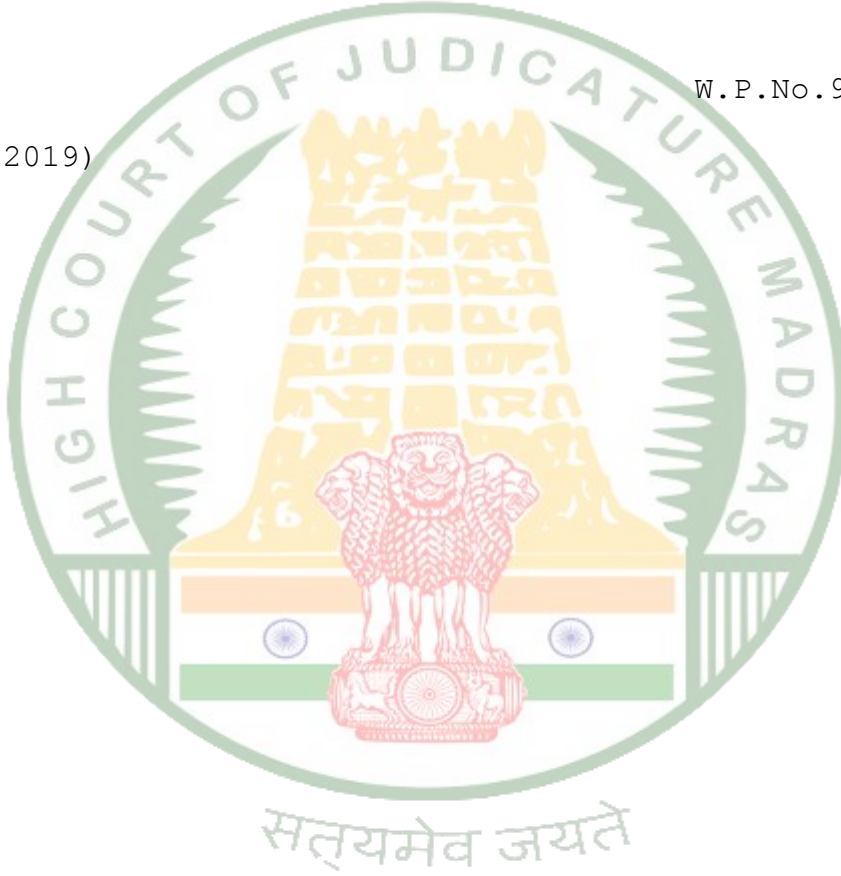
To

The Member Secretary,
Tamil Nadu Forest Uniformed Services Recruitment
Committee,
8th Down floor, Panagal Building,
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Chennai - 600 015

+1cc to Mr.T.Sellapandian, Advocate, SR.No.36560
+1cc to the Govt.Pleader, Vide Sr.No.36784

W.P.No.9341 of 2019

Kak(15/05/2019)



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