

IN THE HIGH COURT OF JUDICATURE AT MADRAS

17.06.2019

Coram
THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.29328 of 2018
and
W.M.P.No.34275 of 2018

M.Balavignesh

....Petitioner

vs.

1.The Director General of Police,
Tamil Nadu,
Mylapore,
Chennai-600 004

2.The Chairman,
Tamil Nadu Uniform Services
Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore,
Chennai-600 008

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to consider the representation of the petitioner dated 26.10.2018 by calling the petitioner for medical examination for the post of Jail Warden.

For Petitioner .. Mr.R.Sankarasubbu

For Respondents ... Mr.V.Kathirvelu, Spl.G.P.

ORDER

The petitioner is a graduate in Engineering and belongs to Backward Class community. His father is a retired S.S.I. of Police. The second respondent issued a Notification, on 28.12.2017, calling for applications for appointment to the post of Grade-II Police Constable, Gr.II Jail Warden and Fireman for the year 2017-18. In response to the Notification, the petitioner had applied and the petitioner having studied his entire schooling in Tamil medium, has claimed PSTM status. A separate 20% reservation is earmarked for PSTM candidates in all recruitments in the State of Tamil Nadu.

2.As per the specification of the Notification, a candidate, who is claiming PSTM status, should enclose 10th standard (SSLC) Certificate, certifying him of having studied in Tamil medium. The petitioner, due to inadvertence, instead of enclosing 10th standard Certificate, has enclosed Higher Secondary School (+2) leaving Certificate, certifying that he studied in Tamil medium. The fact of the matter is that the petitioner studied his entire schooling in Tamil medium up to Higher Secondary level.

3.After participation in the selection process, the petitioner has scored 67.5 marks, which according to the petitioner, is the cut-off mark for appointment to the post of Jail Warden. When the petitioner was called for certificate verification on 07.09.2018, he produced the 10th Standard Certificate, certifying him of having studied in Tamil medium. The certificate was verified and handed over back to him. Thereafter, the petitioner was awaiting for the final process of selection, being medical examination. He was not called for the same. On enquiry, he came to know that as per the stipulation in the Notification, he ought to have enclosed 10th Standard Certificate, which alone would entitle him to claim PSTM status and not +2 certificate.

4.According to the second respondent Board, the petitioner was considered against Backward General Quota and therefore, the marks secured by him was lower than the cut off marks and hence, he was found to be ineligible for appointment. In the said circumstances, the petitioner is before this Court seeking for issue of writ of mandamus.

5.In response to the notice issued by this Court, Mr.V.Kathirvelu, learned Special Government Pleader, has entered appearance on behalf of the respondents and a detailed counter affidavit has been filed.

6.The facts as narrated above have not been disputed at all. The only plea that has been taken by the respondents both in oral submissions as well as in the counter affidavit is that the petitioner did not enclose 10th Standard Certificate at the time of his application and therefore, he was considered against Backward General quota and not a PSTM category. The cut off marks for non PSTM B.C. category was 68 and therefore, the petitioner became ineligible, as he admittedly secured only 67.5 marks.

7.The learned Special Government Pleader appearing for the respondents would further object to grant of any relief in this case on the ground that once a candidate failed to conform to the requirements at the time of application, as per the Notification, cannot be allowed to supplement the same at the

time of verification of certificates. If the present claim is entertained, it will open flood gates and many more candidates, who failed to conform to the requirements would approach the respondent Board for reconsideration of their claims. The learned Special Government Pleader for the respondents would also submit that the Hon'ble Supreme Court of India, in BEDANGA TALUKDAR VS. SAIFUDAULLAH KHAN AND OTHERS (I.A.Nos.5-8 in Civil Appeal Nos.8343-8344 of 2011, dated 28.09.2011) has held that if a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement. He would specifically rely on Paragraph No.28 of the order, wherein, the Hon'ble Supreme Court has observed as under:

"28.We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete."

The learned Special Government Pleader would therefore urge this Court to dismiss the writ petition.

8.The learned counsel appearing for the petitioner would also vehemently contend that it is an admitted fact that the petitioner had studied his entire schooling i.e. up to Higher Secondary level in Tamil medium. Once this is established, the petitioner is automatically entitled to be treated as PSTM candidate. The minor inadvertence of this nature cannot result in the petitioner losing his valuable right

to get appointment in public service, particularly, when the petitioner admittedly had secured 67.5 marks, which is the cut off mark for PSTM candidates and admittedly, he is eligible to be appointed on the basis of such marks as Jail Warden or in any other post, as per the Notification. The learned counsel would also, in contra to the judgment relied on by the learned counsel for the respondents, rely on the decision of the Hon'ble Supreme Court in Dolly Chhanda vs. Chairman JEE (Civil Appeal No.6506 of 2004, dated 05.10.2004). He would particularly draw the attention of this Court to Paragraph No.7, which is extracted hereunder:-

"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 be 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 mark-sheets. 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 for 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 the submission of proof need not necessarily result in rejection of candidature."

Therefore, the learned counsel would submit that the petitioner is entitled to grant of relief.

9.This Court has considered the submissions of the learned counsels and perused the pleadings and materials placed on record.

10.It is not in dispute that the petitioner has studied his entire schooling in Tamil medium of instruction and this fact is very much evident from the documents produced by the petitioner. Therefore, the petitioner has rightly claimed PSTM status, while applying in response to the Notification, dated 28.12.2017. It is not as if the petitioner was trying to make up false claim for PSTM status. No doubt, while enclosing

the certificates, inadvertently, the petitioner had enclosed Higher Secondary school certificate certifying him as having studied in Tamil medium. But, that does not take away the fact that the petitioner has studied in Tamil medium even up to Class 10 (SSLC).

11.As rightly contended by the learned counsel for the petitioner, a very minor and insignificant inadvertent mistake committed by the petitioner cannot result in irreparable loss of his right to be appointed as Constable Grade-II, Jail Warden or Fireman. When the petitioner has secured enough cut off marks, making him eligible to be appointed in any of the posts notified, a minor error committed by the petitioner, while enclosing the certificate, cannot snatch away the opportunity of the petitioner of being appointed in public service.

12.The documents as produced would unequivocally establish the fact that the petitioner has studied in Tamil medium of instruction throughout his schooling and in such view of the matter, this case has to be treated as one of exceptional cases and the respondent Board ought to be directed to accept the certificate produced by the petitioner and treat him as PSTM candidate.

13.Possibility of committing such mistake is quite common when candidates respond to such Notification, but that mistake cannot loom large and affect the very candidature of a person, who responded to such Notification. The fact of the matter is that when a claim is fully supported by unimpeachable documents, such claim needs to be addressed with sympathy, understanding and cannot be dealt with apathy and rigidity.

14.After all obtaining employment in public service is a rare opportunity and such opportunity cannot be snatched away by minor mistake committed by a candidate. In this case, the candidate has submitted certificate of Higher Secondary, certifying him as having studied in Tamil medium. This cannot be stated to be defective enclosure, as the candidate ultimately proved that he studied his entire schooling in Tamil medium. Therefore, this case cannot be treated as run of the mill cases, where a candidate failed to follow proper instructions given in the Notification.

15.For the above said reasons, this Court is of the view that the petitioner has made out a case for grant of relief. The writ petition is allowed and the respondents are directed to accept the 10th Standard Certificate (SSLC) produced by the petitioner and treat him as a PSTM candidate and send him for medical examination and if he is found fit, appoint him as Jail Warden Grade-II or in any other post on the basis of his cut off marks secured in the subject examination.

16.In case, the vacancies notified were already filled up, the respondents are directed to accommodate the petitioner in any of the existing vacancies or in any other future vacancy that may arise in the immediate future. The respondents are directed to comply with this direction as expeditiously as possible, particularly, not later than three months from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Director General of Police,
Tamil Nadu,
Mylapore,
Chennai-600 004
- 2.The Chairman,
Tamil Nadu Uniform Services
Recruitment Board,
Old Commissioner of Police Office Campus,
Pantheon Road,
Egmore, Chennai-600 008.

+lcc to Mr.V.Kadhirvelu, Advocate, S.R.No.49937

+lcc to Mr.R.Sankara subbu, Advocate, S.R.No.49050

W.P.No.29328 of 2018

PP(CO)

RRS (01/07/2019)

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