



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.04.2019

Delivered on : 27.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]Nos.22006 and 22055 of 2018

and

W.M.P.(MD)Nos.19967 and 20011 of 2018

W.P.[MD]No.22006 of 2018:

M.Kavin Kumar : Petitioner

vs.

1.Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Park Town, VOC Nagar,
Chennai-600 003.

2.The Director of Horticulture and Plantation Crops,
O/o. the Director of Horticulture and Plantation Crops,
Chepauk,
Chennai-5. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration, to declare the non-selection of the petitioner to the post of Assistant Horticulture Officer during the certificate verification held on 23.10.2018 as illegal and consequently, for a direction, directing the first respondent to rectify the error in the petitioner's online application pertaining to direct recruitment to the post of Assistant Horticulture Officer by way of changing the petitioner's Community Status as 'DNC' instead of 'BC' and consider the petitioner in the DNC category and appoint the petitioner in the post of Assistant Horticulture Officer, within the time stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent No.1 : Mr.D.Sivaraman

For Respondent No.2 : Mr.C.M.Mari Chelliah Prabhu,
Additional Government Pleader

W.P.[MD]No.22055 of 2018:

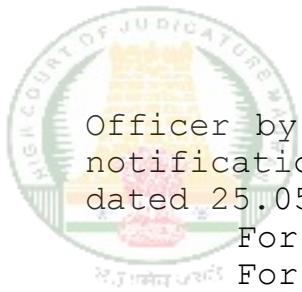
R.Uma Maheswari : Petitioner

vs.

Tamil Nadu Public Service Commission,
TNPSC Building, Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-600 003,
Rep. by its Secretary.

: Respondent

<https://hcsr.csejournals.org.in/hcsejfiles/2019/04/27/2019042701.pdf>
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to appoint the petitioner as Assistant Horticulture



Officer by treating her under the DNC category in pursuance of the notification issued by the respondent in Notification No.10/2018, dated 25.05.2018.

For Petitioner : Mr.M.E.Ilango

For Respondent : Mr.D.Sivaraman

WEB COPY

COMMON ORDER

Seeking a Writ of Declaration, to declare the non-selection of the petitioner to the post of Assistant Horticultural Officer during the certificate verification held on 23.10.2018 as illegal and consequently, a direction, directing the first respondent to rectify the error in the petitioner's online application pertaining to direct recruitment to the post of Assistant Horticultural Officer by way of changing his Community Status as 'DNC' instead of 'BC' and consider him in the DNC category and appoint him in the post of Assistant Horticultural Officer, the petitioner has filed W.P.(MD) No.22006 of 2018.

2. Seeking a Writ of Mandamus, directing the respondent to appoint the petitioner as Assistant Horticultural Officer by treating her under the DNC category in pursuance of the notification issued by the respondent in Notification No.10/2018, dated 25.05.2018, the petitioner has filed W.P.(MD)No.22055 of 2018.

The facts:

W.P. (MD) No.22006/2018:

3. The first respondent has issued the Notification inviting application for the direct recruitment of Assistant Horticultural Officers. Having possessed the eligibility, the petitioner applied through online on 07.06.2018 through a Browsing Centre at his Village, where the typist working there filled up the form, in which, an inadvertent mistake has crept in while typing the communal category column. Though he is in possession of DNC Certificate, it was wrongly entered as 'BC'. Immediately, on noticing the said mistake, he sent a representation dated 01.10.2018 to the first respondent to treat his application under DNC category.

4. By that time, he participated in the written examination on 11.08.2018 and scored 172.5 out of 500 marks. The minimum qualifying marks is 150. Since he scored higher marks than the qualifying marks, he came under the zone of consideration. Thereafter, he was called for certificate verification, vide proceedings of the first respondent dated 03.10.2018, based on which, he appeared for the certificate verification held on 23.10.2018, in which, his certificates were verified by the officials concerned. However, to his shock and surprise, he was not selected due to the inadvertent mistake that has crept in the application. Despite the petitioner's representation in that regard, the first respondent has not selected him. Therefore, the petitioner is before this Court seeking declaration as above.



5. With the above background facts, the learned counsel appearing for the petitioner submitted that there are several vacancies which are not filled up due to non-availability of candidates and if the petitioner is selected under the DNC category, no candidates will be prejudiced, as several vacancies belonging to DNC category are not filled up due to non-availability of candidates. Since vacancies are available, the first respondent should have rectified the inadvertent error crept in his application and should have selected the petitioner, as the same would not affect anyone, as there is lot of unfilled posts. Therefore, he prays for appropriate orders.

6. To support his case, he relied upon an order passed by this Court dated **14.12.2017** in **W.P. (MD) No. 21331 of 2017** [**S.Sabarimalai Madha vs. Teachers Recruitment Board**].

The facts:

W.P. (MD) No. 22055 of 2018:

7. Pursuant to the notification issued by the respondent in Notification No.10/2018, dated 25.05.2018, having possessed the prescribed qualification viz., Diploma in Horticulture, the petitioner herein made an application for the post of Assistant Horticultural Officer through online from an Internet Centre. Though the petitioner provided the correct information with necessary documents, the person, who filled up the application, inadvertently, made a mistake registering her caste as "BC Maravars/Karumaravars/Appanadu/Kondayamkottai Mara" instead of "DNC Maravar". The petitioner, while downloading her hall ticket, noticed the said mistake crept in her online application and immediately, she made a representation to the respondent on 04.08.2018. Though she attended the written examination and secured 285 marks and communal rank of 100, to her shock and surprise, her name was not found in the provisional list of candidates called for certificate verification. Therefore, she has approached this Court seeking appropriate directions.

8. With the above factual position, the learned counsel appearing for the petitioner submitted that the candidates selected were called for certificate verification on 23.10.2018 and the petitioner also went there seeking clarification about her non-inclusion in the provisional list of candidates called for certificate verification, where, she was informed that because of wrong entry of caste, she was not called for certificate verification. The petitioner originally belongs to Maravar Caste of DNC community, but the mistake has crept in while making the application, that too, at the instance of the person who was working at the Internet Centre. Such mistake was not committed with any *mala fide* intention. It is also submitted that for clerical mistake, that too, at the instance of another person, the petitioner cannot be penalized with such huge punishment of rejecting her application in toto, when there are vacancies. Thus, the petitioner prays for appropriate directions.



9. Controverting the above submissions made by the learned counsel appearing for the petitioner in both the Writ Petitions, the learned Standing Counsel appearing on behalf of the Tamil Nadu Public Service Commission, through the common counter-affidavit filed by the Deputy Secretary, Tamil Nadu Public Service Commission, submitted that the petitioner, by name Kavin Kumar was allowed for certificate verification based on his claim in his online application. At the time of certificate verification, it was found that he has wrongly claimed his community status in his online application. Likewise, the petitioner by name Uma Maheswari also wrongly claimed her community status in her online application. They have produced the community certificates, in which, the community has been mentioned as MBC/DNC - Hindu Servai Community Certificate obtained from ZDT (Certificates), Aravakkurichi, Karur and MBC/DNC-Hindu Maravar Community Certificate obtained from ZDT, Thenkasi, Tirunelveli respectively.

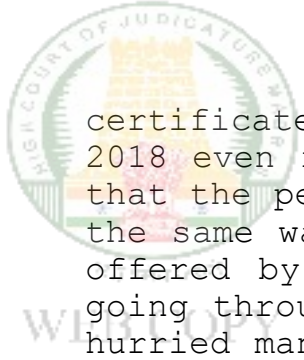
10. It is further submitted that the representations of the petitioners were rejected based on Para 2(10) of the TNPSC "Instructions to Applicants" and also as per Para 12(L) of Notification, dated 25.05.2018, as they have wrongly claimed their communal status in the online applications for the post of Assistant Horticultural Officer.

11. To substantiate the contention, relying upon the decisions of the Hon'ble Apex Court in **Madras Institute of Development Studies vs. Dr. K. Subramanian (Civil Appeal No. 6465 of 2015, decided on 20.08.2015)**; and **Union of India and Others vs. S. Vinodh Kumar and others [2007(8) SCC 100]**, the learned Standing Counsel appearing on behalf of TNPSC strenuously contended that those candidates, who had taken part in the selection process knowing full well the procedures laid down therein, were not entitled to question the same and the posts advertised were public posts and they did not have any vested right for appointment. Thus, the TNPSC has justified its position in rejecting the claim of the petitioners.

12. I have also heard the learned Additional Government Pleader appearing on behalf of the second respondent in W.P.(MD) No.22006 of 2018 on the above submissions.

13. I have considered the submissions made on either side and perused the materials available on record carefully.

14. It is true that having possessed the eligible criteria, the petitioners applied for the post of Assistant Horticultural Officer through online. However, inadvertently, such mistake has crept in while filling up the column relating to community status, which was not at the instance of the petitioners, but, somebody else. The Tamil Nadu Public Service Commission non-selected the petitioner in W.P.(MD) No.22006 of 2018 though he was called for



certificate verification and the petitioner in W.P.(MD)No.22055 of 2018 even for certificate verification. The reason for rejection is that the petitioners have wrongly claimed their community status and the same was found out on certificate verification. The explanation offered by the petitioners for the same is that, without properly going through the online applications, they forwarded the same in a hurried manner. The mistake committed by the petitioners appears to be due to inadvertence and not an intentional one. Finding the mistake that was inadvertent, immediately, the petitioners made representations to the Tamil Nadu Public Service Commission to correct the same.

15. On scrutiny of the typed-set of papers enclosed along with the present Writ Petitions, more particularly, the community certificates of both the petitioners, it is found that admittedly, they belong to DNC and DNC Maravar respectively, which affirms the contention of the petitioners.

16. At this juncture, it is more relevant to rely upon some judgments on the subject matter in issue. They are;

(a) In **W.P.(MD)No.21331 of 2017 [S.Sabarimalai Madha vs. Teachers Recruitment Board]**, decided on 14.12.2017, this Court at Paragraph Nos.4 and 5 held thus:

"4.Having regard to the aforesaid rival submissions made, it is evident that the community status of the petitioner is MBC/DNC which is reflected in her community certificate dated 30.06.2006, issued by the Zonal Deputy Tahzildar, Sivakasi. Though it is contended by the respondent that it was the petitioner who solely responsible for wrongly entering the community status as BC instead of MBC/DNC, it cannot be disputed that the petitioner does not belong to BC as she does not have any certificate for the same.

5.This leads to next question as to whether the petitioner could be permitted to correct her community status irrespective of the fact as to whether the mistake in entering the same as BC instead of MBC/DNC was at her instance or otherwise. This issue is no longer res integra and has been answered in the positive by the decision of the Division Bench of this Court in **National Institute of Fashion Technology, represented by its Director General and another -vs- V.S.Jayya Vishrant [(2017) 7 MLJ 714]** and the decision of the learned Single Judge of this Court in **W.P.(MD)Nos.31388, 31741 and 33390 of 2016 (Judgment dated 29.09.2016) [Vishnu Bargavi, S ?vs- The Director, NEET Exam, Shiksha Kendra and another and followed in W.P.(MD) No.17625 of 2017 dated 29.11.2017 [Ponnumani, M -vs- The Tamil Nadu Uniform Service Recruitment Board and another]**.



(b) This Court in W.P.No.31056 of 2017, decided on 23.01.2018 [L.Vikram vs. The Secretary to Government], whereof, I had an occasion to deal with the case like that of the petitioners herein, observed, at Paragraph Nos.7 to 9, as follows:

"7. To err is human and an inadvertent mistake committed by a student, who just finished Plus Two cannot be employed against his interest, especially when the documents are otherwise.

8. Further, the identical subject matter has been dealt with in detail, by this Court in various decisions and one such case being W.P.No.17400 of 2017 (C.Gayathri v. The CBSC, Rep. by its Secretary, New Delhi and two others) where-under, after discussing in detail the issue involved, this Court has disposed of the said writ petition, by directing the respondents therein to consider the claim of the petitioner and treat the petitioner therein as Backward Class Community, while considering for admission to MBBS Course. Pursuant to the said decision, many writ petitions, on the same subject matter, came to be allowed by this Court.

9. Therefore, this Court has got no hesitation to direct the respondents to treat the petitioner under the OBC category, on submission of relevant original documents before them, especially the 4th respondent, within one week from the date of receipt of a copy of this order. If the fourth respondent is satisfied that the petitioner belongs to OBC Category, the writ petitioner shall be allowed to continue with his studies, as one belonging to the OBC Category, since the writ petitioner has secured more than OBC cut off. Now that the petitioner has completed the first year BDS course. Therefore, the writ petition stands disposed of, by treating the studies of the petitioner under OBC Category and on that basis, he shall be allowed to continue and complete his studies. The said exercise has to be complied with, at the earliest, more particularly, within a period of four weeks from the date of receipt of a copy of this order."

(c) A Division Bench of this Court in W.A.No.424 of 2018, decided on 23.01.2019 [M.Silamparasan vs. The Secretary and Controller of Examinations], at paragraph No.13 observed thus:

"The indisputable fact is that the appellant has secured the highest marks. A post has been kept vacant subject to the outcome of the writ appeal. The Tamil Nadu Public Service Commission is not correct in rejecting the application. The Tamil Nadu Public Service Commission, at best, would have only refused to consider his application for preferential allotment to the post, under PSTM quota.



But, the petitioner is entitled to be considered for other categories. Learned single Judge, has passed the impugned order, only on a wrong statement made by the learned standing counsel for TNPSC, stating that the petitioner has not secured the minimum cut off marks. Learned single Judge, has not considered the issue as to whether, if a candidate has made a claim, under PSTM quota, and if a certificate to such preferential claim is not submitted, whether the said candidate can be considered for selection against the seats earmarked for MBC quota, or in general category? Our answer to the above issue is that the candidate who is otherwise qualified, should be considered, against the seats earmarked for MBC, the category to which the candidate belongs or in general category."

17. Having regard to the above said legal position and also considering the fact that the petitioners have already sent representations dated 01.10.2018 and 04.08.2018 respectively to rectify such mistakes before the certificate verification, I am of the considered view that for such mistake that was due to inadvertence, which can be rectified, the petitioners cannot be penalized by denying employment, as vacancies are available, in case they are otherwise found eligible, apart from community.

18. In view of the above stated position, the Tamil Nadu Public Service Commission is, hereby, directed to consider the claim of the petitioners and pass appropriate orders rectifying the mistake by entering the community status of the petitioner (M.Kavin Kumar) as 'DNC' instead of 'BC' and the petitioner (R.Uma Maheswari) as 'DNC Maravar' instead of 'BC Maravar' and treating them as candidates belonging to DNC and DNC Maravar category respectively, consider them for appointment to the post of Assistant Horticultural Officer, if they are otherwise found eligible and if there are no other legal impediments. The said exercise shall be carried out, as expeditiously as possible, preferably, within a period of six weeks from the date of receipt of a copy of this order.

19. The Writ Petitions are disposed of on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS)



To

1. The Secretary,
Tamil Nadu Public Service Commission,
Park Town, VOC Nagar,
Chennai-600 003.

WEB COPY

2. The Director of Horticulture and Plantation Crops,
O/o. the Director of Horticulture and Plantation Crops,
Chepauk,
Chennai-5.

+1cc to Mr. D.SIVARAMAN, Advocate, SR.No.63432

+1cc to M/s.Special Government Pleader, SR.No. 63970

Common Order made in
W.P. [MD] Nos. 22006 and 22055 of 2018

Delivered on:
27.04.2019

SML

KK/SAR/16.05.2019/ 8P- 5C