

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2019

PRONOUNCED ON: 20.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN
AND

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.2316 of 2019

A.K.Anand

.. Petitioner

Vs

1. The Registrar General,
Madras High Court,
Chennai-1042.The Tamil Nadu Public Service Commission,
rep. by its Secretary,
Frazer Road(TNPSC Road),
Park Town, V.O.C.Nagar,
Chennai-600 003

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to impugned Memorandum No.6485/OTD-C4/2017 dated 05.12.2018 on the file of the second respondent in respect of the Recruitment(Direct) to the posts of Civil Judge in the Tamilnadu State Judicial Service for the year 2014-2015 to 2016-2017 and quash the same, consequently direct the respondents to appoint the petitioner to the post of Civil Judge in the Tamil Nadu State

Judicial Service, within a reasonable time to be fixed by this Court.

For Petitioner : Mr.P.Wilson, Sr.Counsel for
Mr.S.Prasanna
For Respondents : Mr.B.Vijay for R1
Mr.C.N.G.Niraimathy, SC for R2

ORDER

V.PARTHIBAN, J.

This Writ petition has been filed seeking for issuance of a Certiorarified Mandamus to call for the records relating to impugned Memorandum No.6485/OTD-C4/2017 dated 05.12.2018 on the file of the second respondent in respect of the Recruitment (Direct) to the posts of Civil Judge in the Tamilnadu State Judicial Service for the year 2014-2015 to 2016-2017 quash the same and consequently direct the respondents to appoint the petitioner to the post of Civil Judge in the Tamil Nadu State Judicial Service, within a reasonable time to be fixed by this Court.

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2. Tamil Nadu Public Service Commission (in short, 'the Commission'), the second respondent herein has issued a notification on 09.04.2018 inviting applications from eligible candidates for

appointment to the post of Civil Judge in Tamilnadu State Judicial Service for the vacancies of the year 2014-2015 to 2016-2017 from the open market. In response to the said notification, the petitioner herein applied for consideration of his candidature. The petitioner was issued with the Hall Ticket to participate in the selection process. The selection process comprised in three stages, viz., preliminary examination, main examination and oral test. The preliminary examination was held on 09.06.2018, in which the petitioner came out successful and was thereafter, allowed to participate in the main examination, which was scheduled on 11.08.2018 and 12.08.2018. The petitioner, having come out successful in the main examination, he was called for certificate verification by provisionally admitting him to the oral test scheduled on 01.10.2018. The petitioner claimed to have belonged to the Schedule Caste community for which a separate quota was prescribed in the subject selection by the second respondent Commission.

3. On 01.10.2018, when the certificates were produced by the petitioner, it was found that the Community Certificate produced by

him was not found to be a valid one and therefore, the petitioner was directed to produce a valid Community Certificate in a particular format to be issued by the competent authority from his native place. Originally, the petitioner appears to have submitted a Community Certificate issued by an authority from the Union Territory of Pondicherry, certifying him as belonging to Schedule Caste community. However, as per the Commission's guidelines, it could not be accepted since the petitioner's permanent residence was within the State of Tamilnadu (Villupuram District) and therefore, he was directed to obtain a valid certificate from the competent authority in the place where the petitioner and his family members hail from.

4.The Commission, on 01.10.2018, directed the petitioner to produce two documents viz., one a valid Community Certificate and also another one, relating to a criminal case in which, the petitioner was involved. The Commission by communication dated 08.10.2018, has directed the petitioner to produce the same. In response to the same, the petitioner had produced a judgment copy delivered in C.C. No.94 of 2014, wherein, by the said judgment, the petitioner was

acquitted of the criminal charges. But with regard to the production of Community Certificate in a proper format, the petitioner had requested two weeks time for production of the same. Thereafter, it appears that the petitioner had applied for Community Certificate in a proper format in November, 2018 and on such application being made, the competent authority namely, the Tahsildar, Villupuram District issued On-Line Community Certificate dated 22.11.2018. Thereafter, the petitioner appears to have sent the documents through registered post on 28.11.2018 & 29.11.2018, which were received by the second respondent Commission on 30.11.2018 and 03.12.2018 respectively.

5. According to the petitioner, in fact earlier, advance information was given to the Commission by way of a note issued by the Tahsildar, Villupuram District certifying that the petitioner was belonging to Schedule Caste community. Subsequently, the Commission has also published provisionally selected candidates list on 08.01.2019. When the petitioner approached the Commission that his Community Certificate was now issued in a proper format and when he

wanted declaration of his result, as a consequence of his selection, the petitioner received a communication from the Commission dated 05.12.2018 stating that his application to the post of Civil Judge for the years 2014-2015 to 2016-2017 has been rejected. In the rejection order, it was mentioned that the note issued by the Tahsildar, Villupuram District dated 16.10.2018 certifying that the petitioner was belonging to Schedule Caste community was not acceptable as a valid piece of document in support of the community status claimed by the petitioner. The said rejection order is put to challenge by the petitioner in the present writ petition.

6. On behalf of the Commission, counter affidavit and an additional counter affidavit have been filed, strongly resisting the challenge made in the writ petition.

7. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner would strenuously contend that the rejection of the candidature of the petitioner by the Commission vide impugned communication dated 05.12.2018 cannot be countenanced both in law

or on facts in view of the following:

(i) The petitioner herein at the time when he submitted his On-Line application, has indicated his caste status and at the time when the verification was done on 01.10.2018, he, in fact, submitted the Caste Certificate denoting that he was belonging to Schedule Caste community.

(ii) The certificate was issued by the Pondichery Government when the petitioner was residing there at that point of time. In fact, immediately on being directed to produce the certificate by the competent authority from his native village, the petitioner promptly approached the competent authority namely the Tahsildar, Villupuram District and obtained a communication (note) dated 16.10.2018 certifying him to be belonging to Schedule Caste community. Thereafter, the petitioner, had pursued his efforts to get the certificate in a proper format as demanded by the Commission and he ultimately obtained the certificate on 22.11.2018 and sent the same by the registered post, which was also received by the Commission before rejection order came to be issued by the Commission vide communication dated 05.12.2018.

(iii) When the Commission had taken a decision to reject the application of the petitioner and conveyed him through the impugned order dated 05.12.2018, the Commission was already in receipt of the valid Community Certificate produced by the petitioner. In such circumstances, the rejection by the Commission relying on the note issued by the Tahsildar, Villupuram District dated 16.10.2018, was extremely unfortunate and amounted to shirking its responsibility in carrying out the constitutional mandate of providing reservation to the down trodden community.

8. The learned Senior Counsel appearing for the petitioner would also submit that the Government of India has issued guidelines and instructions, that any *prima facie* material indicating the community status of the candidates must be accepted at the time of selection and that such selection will always be provisional subject to the verification of the community status of the candidates concerned. In this case, the fact of the matter was that the petitioner produced Community Certificate, of course, not in the proper format as directed by the Commission, yet nevertheless, the said Certificate

clearly indicated that the petitioner belonged to Schedule Caste community. According to the learned Senior counsel, time and again, the Courts have held that in the matter of production of Community Certificates, the selection cannot be denied to the candidates claiming reservation only on the ground of delay. The learned Senior counsel would submit that the rigid stand taken by the Commission that within the time sought by the petitioner i.e., two weeks, the certificate could not be produced, cannot be countenanced in law since it was not the fault of the candidate not to have obtained the certificate from the public authority within the time he committed to the Commission. In any event, the Certificate was obtained from the competent authority within a few weeks i.e., on 22.11.2018 and the same was also produced before a decision was taken by the Commission as conveyed through the impugned communication dated 05.12.2018. Therefore, on facts, the petitioner was entitled to be considered as a valid candidate and the Commission ought to have declared his result by accepting the certificate produced by him. After all, there was no dispute in regard to the community status of

the petitioner. The dispute was only that the certificate was produced with a little delay.

9. The learned Senior counsel would also rely on the following decisions in support of his contentions viz.,

i) “2010 (116) DRJ 668(DB) in WP.(C) No.11928 of 2009 dated 06.04.2010 in the case of “Hari Singh Vs. Staff Selection Commission and Another”, which was relied in extenso by the learned Senior Counsel, wherein, the Delhi High Court has found in paragraph nos.24 to 29 and paragraph nos.52 & 53 of the judgment as under:

“24. We now proceed to examine the judgment of a learned Single Judge of this Court in Tej Pal Singh (supra) in detail. As noticed above, this decision has been affirmed by the Division Bench of this Court and the Special Leave Petition to challenge that decision has also been rejected by the Supreme Court. This court in Tej Pal Singh (supra) was dealing with a case where the petitioners belonged to the SC category. The caste certificates submitted by the petitioners were not considered by the respondents for selection to the posts of teachers in the Municipal Corporation of

Delhi/NDMC on the ground that their certificates were submitted after 30.06.1998 which was the last date specified for the purpose. According to the petitioners, they had submitted the requisite certificates, including their caste certificates, and after perusing the same and being satisfied therewith, the respondent board had called the petitioners for verification between 06.10.1998 and 22.10.1998. The petitioners had further submitted that they had attended the office of the respondent board for verification and checking of the original documents. However, subsequently the petitioners learnt that their candidature was not considered on the ground that the caste certificates were dated post 30.06.1998 and only those candidates whose certificates were dated prior to 30.06.1998, were considered. It was argued that this action of the respondents was arbitrary and illegal and that the date of the certificate is immaterial, as what is relevant is the fact that the petitioners belonged to the SC category and this fact does not change whether the certificate is issued prior to 30.06.1998 or after 30.06.1998. The submission of the petitioner was that though they had submitted their caste certificates along with their applications, however, those certificates were not issued by the competent authority under the Govt. of NCT of Delhi. However, before the date for verification of the certificates arrived, they had applied for and obtained the requisite caste certificates issued by the competent authority. The petitioners submitted that as

per the guidelines issued on reservations and concessions for SC and ST candidates, the petitioners were entitled to submit such certificates even after the cut off date. It was also argued that the cut off date fixed in the advertisement was fixed for the purpose of educational qualification, professional experience and age limit and did not apply to production of SC certificate issued by the competent authority. On the other hand, the submission of the respondent was that the application form had to be submitted duly complete in all respects by 30.06.1998. The application was required to be accompanied with copies of documents showing the educational qualification, professional expertise, age limit along with SC/ST/OBC certificate, if any, issued by the competent authority. Since the last date for submission of the applications including copy of SC/ST/OBC certificate was 30.06.1998, it follows that the certificate which was to be submitted had to be of a date prior to 30.06.1998. It was argued that the cut off date of 30.06.1998 adopted by the respondent board for administrative purposes had been made applicable uniformly and therefore, the same was not in violation of [Article 14](#) of the Constitution of India.

25. The Court by a considered judgment accepted the petitioner's contentions. The court observed that it was an undisputed fact that the petitioners belong to the SC category. The petitioners had submitted their applications in the prescribed form by 30.06.1998

along with all requisite documents including SC certificate. However, the SC certificates had been issued by other State Governments and not by Government of NCT of Delhi. The petitioners had been able to obtain SC certificates issued by Govt. of NCT of Delhi after 30.06.1998 and submitted the same as and when they had received the certificates. The certificates had been submitted before the petitioners were called for verification of their documents by the respondent board.

26. The learned Single Judge extracted paragraphs 3 and 4 from Chapter II of Swamy's Compilation of Reservations and Concessions for Scheduled Castes and Scheduled Tribes. The said paragraphs read as follows:

"3. Provisional appointment subject to verification -

Even where the prescribed certificates have been produced, the appointing authorities should include a clause in the offer of appointment as follows:-

"The appointment is provisional and is subject to the caste/tribe certificates being verified through the proper channels and if the verification reveals that the claim to belong to Scheduled Caste or Scheduled Tribe, as the case may be, is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificates."

4. Provisional appointment when prescribed certificates not produced.

Where a candidate belonging to an S.C. or S.T. is unable to produce a certificate from any of the prescribed authorities, he may be appointed provisionally on the basis of whatever prima facie proof he is able to produce in support of this claim, subject to his furnishing the prescribed certificate within a reasonable time. If there is genuine difficulty in his obtaining a certificate, the appointing authority should itself verify his claim through the District Magistrate concerned. Appointment of an S.C. or S.T. candidate should not be withheld/delayed pending verification of caste status."

27. After extracting the aforesaid paragraphs, the court held as follows:

"13. Thus as per the aforesaid provisions when the certificate is produced it is subject to the verification so that the authorities concerned are satisfied about the genuineness of the certificate and the fact that candidate belong to SC/ST category. Moreover even if no certificate is produced the appointment is to be given to SC or ST candidate provisionally on the basis of whatever prima facie proof he is able to produce in support of his claim subject to furnishing the prescribed certificate within reasonable period. Not only this it is further prescribed that if the candidate is feeling genuine difficulty in obtaining certificate, the authority should itself verify his claim through the Magistrate concerned and appointment of SC/ST candidates should not be withheld/delayed pending such verification of caste status. To my mind, these instructions which prescribe the procedure as to how and when certificate is to be or can be produced, clinch the issue in this case. It prescribes, in no uncertain terms that a person who claims to belong to SC/ST category is not to

be denied appointment merely because he has not been able to produce the certificate. On the contrary, even after the provisional appointment he is unable to produce the certificate because of genuine difficulty, obligation is cast upon the authorities to verify his claim. In this case admittedly all the petitioners produced the certificate before 30th June, 1998 to the effect that they belong to SC category. However, these certificates were issued by other State Governments and not by Government of NCTD. Thus along with their application they submitted prima facie proof in support of their claim that they belong to SC category. Not only this they could even produce the certificate from competent authority of government of NCTD also much before the verification of the original certificates by the Board. Thus the appointment could not have been denied to the petitioners merely because the certificate issued by the competent authority of government of NCTD are dated after 30th June, 1998." (emphasis supplied)

28. The Court went on to examine the matter from another standpoint. It was observed that the vacancies had been reserved for, inter alia, SC category/candidates. In order to be considered for the post reserved for SC category, the requirement is that the person should belong to that category. If a person is Scheduled Caste, he is so by birth and not by acquisition of that category because of any other event happening at a later stage. A certificate issued by a competent authority to the effect that a candidate belongs to the SC category is only an affirmation of a fact which is already in existence. The purpose of such a certificate is to enable the authorities to believe the assertion of the candidate that he belongs to SC

category and act thereon by giving benefit to such SC candidate. The court held that it could not be said that the petitioners did not belong to the SC category prior to 30.06.1998 or that they acquired the status of belonging to the scheduled castes only on the date of issuance of the certificate. Consequently, the court held that the requirement that the caste certificate should be dated prior to 30.06.1998 would be clearly arbitrary, as it had no rationale objective sought to be achieved. The court further held as follows:

"18. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the Fundamental Rights and Directive Principles of the Constitution, in particular Arts. 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens of the society meaningful.

19. One can usefully draw sustenance from the following words of wisdom spoken by the Apex Court in Valsamma Paul (Mrs.) Vs. Cochin University and others, reported in AIR 1996 SC 1011:-

"The Constitution through its Preamble, Fundamental Rights and Directive Principles created a Secular State based on the principle of

equality and non- discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of person with the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens on equal footing....."

20. For this reason Government has itself come out with the aforesaid guidelines permitting the candidates to submit proof that they belong to SC category, by furnishing the certificate issued by competent authority within reasonable time even if it is not submitted at the time of making the application for the job."

29. The court also noticed the decision of the Division Bench of the Bombay High Court in the case of *Deepak v. Competent Authority* for the Purpose of Admission to Engineering Course in Government Engineering College, Pune, AIR 1997 Bom 1, wherein it had been held that the requirement that caste verification certificate must accompany the application form should not be insisted upon, and it cannot be made a pre-condition for accepting the application forms and considering the claim of the candidates, in particular, those claiming to belong to the reserved category. The Bombay High Court had observed that the applications accompanied by the caste certificate issued by the Taluka Executive Magistrate should be held to be sufficient for considering the claim of the candidate in a particular reserved category. The admission so granted would be provisional subject to

the result of the scrutiny committee. If the caste claimed is held to be not a reserved caste and/or the caste certificate is invalidated by the scrutiny committee finally, then the admission will also stand cancelled.”

.....

52. The decision in *Tej Pal Singh* (supra) is nevertheless relevant for our purpose as the reliance placed on paragraphs 3 and 4 from Swamy's Compilation, as aforesaid, was only one of the reasons for the view taken by the Court. In our view, the reasoning adopted by the Court, as discussed by us in paragraphs 28 and 29 herein above, is applicable in the present case as well.

53. For the aforesaid reasons, we allow the writ petition and direct that the petitioner be appointed against an existing vacancy, and if no such vacancy presently exists, against the vacancy of Sub-Inspector next arising in a Central Police Organisation, keeping in view his preferences and merit in the examination process already undertaken by him. To determine his entitlement for the particular CPO, his merit position in the selection process taken by him shall be taken into consideration. The petitioner shall be given notional seniority along with his batchmates and his pay shall also be fixed notionally. However, he shall be entitled to be paid the allowances only from the date he actually joins the CPO. We may note here that the petitioner is already gainfully employed with the CRPF.

In the above case, the Delhi High Court has threadbare discussed about the claim of the reserved candidates and as to how it should be dealt with. In fact, the Court has also extracted the guidelines issued by the Government of India as to how the selection of the reserved candidates should be done in cases where, the candidates concerned could not produce certificates in a proper format as decided by the selecting authority. Finally, the Division Bench of the Delhi High Court has directed that the petitioner concerned therein was to be selected and appointed.

ii) **2010 SCC On-Line Mad 1629 in WP.No.23394 of 2009 dated 16.02.2010 in the case of “Selvi Periyamayagi Vs. The Government of Tamil nadu, rep. by Secretary, Personal & Administration Reforms Department and another”**, wherein, the learned Senior Counsel would rely on the following observations as found in paragraph nos.7 to 9 which are extracted hereunder:

“7. The facts of the said case was also a case relating to non production of community certificate. In the said case also the candidate was provisionally selected under ST category and even during the certificate verification done by TNPSC, she was not able

to produce the community certificate, since the enquiry regarding her communal status was pending. Ultimately, only after a period of one month after the date of certificate verification, the community certificate was issued to the said candidate, but was not in the prescribed format. In spite of producing such certificate the TNPSC rejected her candidature on the same ground as that of the present case. The writ petition filed against the such order came to be allowed by the learned Single Judge by order dated 06.08.2008 against, which TNPSC preferred in W.A.(MD).No.585/2009, the Hon'ble Division Bench while examining the purposes for which certificates are to be produced and the kind of certificates were analyzed held as follows:-

"7. There can be no controversy that the instructions to candidates and the brochure bind the candidates and the Service Commission, according to which, the candidates are bound to produce all the necessary documents/certificates along with the application. In general, the application shall be rejected for non-production of such certificates/documents. But, in our considered opinion, an exception can be carved out to the same. At this juncture, it would be worthwhile to clarify that all certificates, which are required to be produced along with application, cannot be treated equally. There are some certificates, like certificates relating to the basic qualification etc., which are essential, without which the applications cannot be entertained at all. On the other hand, there are certain other certificates, like Community Certificate, certificates relating to special consideration, like sports certificate, NCC, NSS Certificates, etc., which are not essential for

entertaining the application of the candidates. So, there can be no controversy that non-production of the former kind of certificates within the cut off date, shall be a ground to reject the application summarily, as mentioned in the instructions to the candidates and information brochure, because, they relate to the essential qualifications for making application. To put it otherwise, unless the Service Commission is satisfied about the eligibility criteria based on the said certificate, it cannot entertain the applications, and therefore, the applications in such an event are to be necessarily rejected.

“8. Insofar as the later kind of certificates are concerned, for entertaining the application, these certificates, which relate only to special qualifications or consideration, are not that much material. Even in the absence of these certificates, the applications are to be entertained and when the question of considering the special qualifications or status arises, it would be suffice, if the certificates are made available to the Commission. For example, if a candidate claims that he/she is entitled for being considered under the quota reserved for Schedule Tribe Community and if the required Community Certificate is not produced, his/her application cannot be rejected, but instead he/she has to be treated under the open quota. For any reason, if such a Community Certificate is produced before the date of finalization of the provisional selection list based on the cut off marks secured in the written examination, in our opinion, the same would be suffice.

“9. It is needless to point out that difference cut off marks are, generally, prescribed for different communities, such as Backward Class, Most Backward Class, Scheduled Caste and Scheduled Tribe. The Community Certificate is required only to find out whether a candidate is eligible for being considered under the reserved quota and not for any other purpose. Any other approach would result in deprivation of valuable right of a candidate for being considered against

the seats reserved for which she/he would be otherwise entitled. Therefore, in our considered opinion, if the Community Certificate is produced before the cut off mark is finalized to call the candidates either for interview or for certificate verification, it would meet the requirements."

"8. After rendering such finding ultimately the Hon'ble Division Bench dismissed the writ appeal filed by TNPSC. In my view the decision in Writ Appeal No. 585 of 2009 is squarely applicable to the facts and circumstances of the present case and therefore, I am inclined to follow the same.

"9. In fact in the present case, the petitioner has produced the community certificate at the first earliest opportunity available to her after she was furnished with the same, the relevant dates being, the community certificate was issued on 22.09.2008, the provisional list of the selected candidates was published on 08.11.2008 and the petitioner was called upon to appear for the certificate verification on 04.12.2008 and on that date, she has produced the community certificate. Therefore, the petitioner is entitled to succeed in the writ petition and accordingly, there will be a direction to the respondents to consider and select the petitioner in the post of typist based on her provisional selection as published in the provisional select list dated 08.11.2008 by treating her, as a backward community candidate and issue appropriate posting orders within a period of two weeks from the date of receipt of a copy of this Court."

In the above case, the learned Single Judge has dealt with the similar case about the production of the Community Certificate and finally held in favour of the petitioner therein.

iii) **2012 (3) CTC 796 in WP No.14054 of 2012 dated 06.06.2012 in the case of “D.Thriveni Vs. The State of Tamilnadu, rep. by the Secretary, Home Department, Fort Saint George, Chennai and another”**, wherein, the learned Senior Counsel would draw the attention of this Court to paragraph no.13, wherein, a learned Division Bench of this Court has held as under:

"13. This matter can be seen from yet another angle as well. The petitioner has secured sufficient marks. The candidates who have secured lesser marks than the petitioner have been called for interview. She has not been called for interview on the only ground that she has not produced the Community Certificate. The facts narrated above, would show that the petitioner is not wholly at fault for the non-production of Community Certificate. The submission of the learned Senior Counsel appearing for the second respondent that the petitioner has approached this Court belatedly and therefore, she is not entitled for the discretionary and extraordinary relief under Article 226 of the Constitution of India, in our considered view, cannot be countenanced. Delay, laches

and acquiescence are to be seen on the facts and circumstances of each case and there is no law which mandates that a relief can be denied merely on the ground of delay. The position of law has been rather well settled by the Hon'ble Apex Court in various pronouncements, including the recent one in *Royal Orchid Hotel Ltd, and another Vs. G. Jayarama Reddy and others*, 2011 (10) SCC 608, wherein, it has been held that rule against laches is one of practice and not law".

In the above judgment, the learned Division Bench succinctly held as to how the delay in such matters to be viewed by the authorities. The learned Senior counsel would submit that all the three decisions relied on by him would unequivocally clinch the issue in favour of the petitioner herein. According to the learned Senior Counsel, the only point of resistance of the Commission is the aspect of delay and the delay as such in this case is negligible and not so material. However, unfortunately the Commission has adopted a needless wooden approach which runs contrary to the constitutional principles of providing relief to the reserved candidates.

10. Per contra, Ms.C.N.G.Niraimathy, the learned Standing Counsel appearing for the Commission would stoutly oppose grant of

relief to the petitioner. According to the learned Standing Counsel for the Commission, although the petitioner himself had sought two weeks time in October 2018, and even after the lapse of two weeks time, he could not produce any Community Certificate as directed by the Commission. In fact, the petitioner had applied for issuance of Community Certificate only after he was put on notice by the Commission in November 2018. Therefore, the Commission felt that as per the conditions prescribed in the application, he was not entitled to be considered against the quota reserved for Schedule Caste Community and therefore, the Commission has rightly rejected his candidature. Although, the learned Standing counsel would submit that a decision was taken to reject the candidature of the petitioner on 24.10.2018, but the Commission was not able to produce communication dated 24.10.2018 about the decision taken by the Commission as claimed by the learned Standing counsel. In any event, this Court is of the view that whether the decision taken was on 24.10.2018 or 05.12.2018 is immaterial in the face of production of valid Community Certificate by the petitioner subsequently on 22.11.2018.

11. Mr.B.Vijay, the learned counsel appearing for the first respondent would also oppose the writ petition on the similar lines as advanced by the learned Standing counsel appearing for the Commission.

12. Heard Mr.P.Wilson, learned Senior Counsel appearing for the petitioner and the learned counsels appearing for the respondents 1 and 2.

13. The petitioner's claim that he belongs to Schedule Caste Community is not in dispute at all. There cannot be any dispute also regarding the petitioner's caste status in view of the production of valid Community Certificate dated 22.11.2018. However, the only point which was raised against the petitioner for rejection of his candidature by the Commission is that at the time when the certificates were verified on 01.10.2018, the petitioner could not produce a valid Community Certificate in proper format issued by the competent authority. This Court is unable to appreciate the stand

taken by the Commission particularly, with regard to the matters pertaining to reservation. There are instructions/guidelines issued by the Government of India, which are part of the brochure of compilation of various instructions governing the selection and appointment of persons belonging to reserved category, namely ST/SC, wherein, it has been clearly spelt out that any document indicating the status of the candidate concerned, must be accepted on its face value and on such basis, the candidates need to be selected, of-course provisionally and the certificate or what ever document produced by the candidates will be subjected to final verification by the competent authorities. These guidelines issued in fact, referred to in detail in the Delhi High Court judgment, by the Government in order to protect the interest of the persons belonging to the reserved candidates as their interest should not suffer in case of delay in obtaining the Community Certificates in proper format within the appropriate time.

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14. In the case on hand, it was the fact that the petitioner had produced the Community Certificate issued by the Government of Pondicherry, certifying him that he belonged to Schedule Caste

Community. However, that was not accepted by the Commission, since the certificate was not issued by the authority where the petitioner was a permanent resident. Thereafter, the petitioner had applied to the competent authority and obtained a certificate from him on 22.11.2018. In fact, earlier in order to satisfy the Commission, the petitioner had produced the Tahsildar note indicating that he belonged to Schedule Caste Community. In such circumstances, the Commission ought to have accepted the certificate and declared his selection subject to verification of his Community Certificate. But unfortunately, the Commission which is a constitutional body, has taken a rigid and over scrupulous stand in binding down the petitioner to produce the certificate issued by the competent authority within two weeks from the date of communication. Such pedantic approach adopted by the Commission to say the least is not befitting the Commission bestowed with constitutional status. In fact, the learned Division Bench, in its order, which is relied on by the learned Senior Counsel for the petitioner reported in **2012 (3) CTC 796 in WP No.14054 of 2012 dated 06.06.2012 in the case of "D.Thriveni Vs. The State of Tamilnadu, rep. by the Secretary, Home Department,**

Fort Saint George, Chennai and another” in paragraph no.13 which is extracted supra, has clearly appreciated such situation and held that the delay in procuring the Community Certificate cannot be faulted on the part of the petitioner. In this case, the Commission appears to be completely oblivious to the system and practice of the Government and its official while taking a decision towards issuance of Community Certificate. When a person applies for the issuance of a Community Certificate, the authority cannot issue the certificate for the asking, particularly in case of Schedule Caste and Schedule Tribe communities. The decision to issue Community Certificate was to be preceded by investigation and enquiry and that would take considerable time for which the person who applied for Community Certificate cannot be held responsible at all. Unfortunately, the Commission while sticking to its terms and conditions, cannot blindly apply the Rules unmindful of the effect of such application, particularly, when a candidate who in fact belonged to Schedule Caste community, cannot be deprived of his due selection and appointment only because he was not able to produce the certificate in a proper format within the stipulated time notwithstanding the fact that the

petitioner had indeed produced document at the time of his selection supporting his community status.

15. From the manner in which the Commission rejected the candidature of the petitioner in haste, does not show the Commission in good light as the Commission, which is expected to adopt the principle of fairness in action. Admittedly, in this case, a valid community certificate has been received by the Commission before 05.12.2018 and in the face of that, the impugned communication by the Commission dated 05.12.2018 is totally unwarranted and uncalled for. The Commission's decision to reject the candidature of the petitioner, in the circumstances of the case, appears to be too rash and apathetic. The Commission, which is a premiere Recruiting Agency in the State of Tamilnadu, clothed with constitutional status cannot abdicate its constitutional responsibility and deal with the claims of reserved candidates in such a cavalier fashion. This is a fit case on hand that the action of the Commission in rejecting the candidature of the petitioner to be discountenanced outright. The impugned decision by the Commission, in the opinion of this Court, is

born out of bureaucratic callousness and insensitivity, stifling the constitutional right of the candidate aspiring for public appointment on the basis of socially disadvantaged status and therefore, the same is liable to set aside.

16. The decisions relied on by the learned Senior counsel appearing for the petitioner cited supra, can be squarely applied to the factual matrix of the present case and in fact, all the three decisions have in-extenso dealt with the similar claim of the candidates from reserved community and uniformly held that liberal approach is required in such matters in order to carry out the mandate of the Constitution of optimizing the benefits to be conferred on the persons claiming reserved status in the matters of public employment, it is the duty of every Government agency particularly, constitutional agency to ensure that such mandate is not trifled with on certain hyper technical objections. Such officious approach is anti-thesis to affirmative action expected of a constitutional body. Therefore, this Court has come to an inexorable conclusion that the rejection of the petitioner's candidature is unsustainable.

17. In the circumstances, this Court has no hesitation in allowing the Writ Petition. Therefore, the impugned communication No.6485/OTD-C4/2017 dated 05.12.2018 is hereby set aside. The second respondent Commission is directed to accept the certificate produced by the petitioner dated 22.11.2018, certifying him belonging to Schedule Caste community and declare the result and subject the petitioner to further process of selection. Complete the entire selection process within a period of eight weeks from the date of receipt of a copy of this order.

18. With the above direction, the Writ Petition is allowed. No costs.

सत्यमेव जयते

(V.B.D., J.) (V.P.N., J.)
20.01.2020

Index : No
Internet : Yes
dn/suk

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To

1. The Registrar General,
Madras High Court,
Chennai-104
2. The Tamil Nadu Public Service Commission,
rep. by its Secretary,
Frazer Road (TNPSC Road),
Park Town, V.O.C. Nagar,
Chennai-600 003



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V.BHARATHIDASAN.J.,
& V.PARTHIBAN.J.,

dn/suk



W.P.No.2316 of 2019

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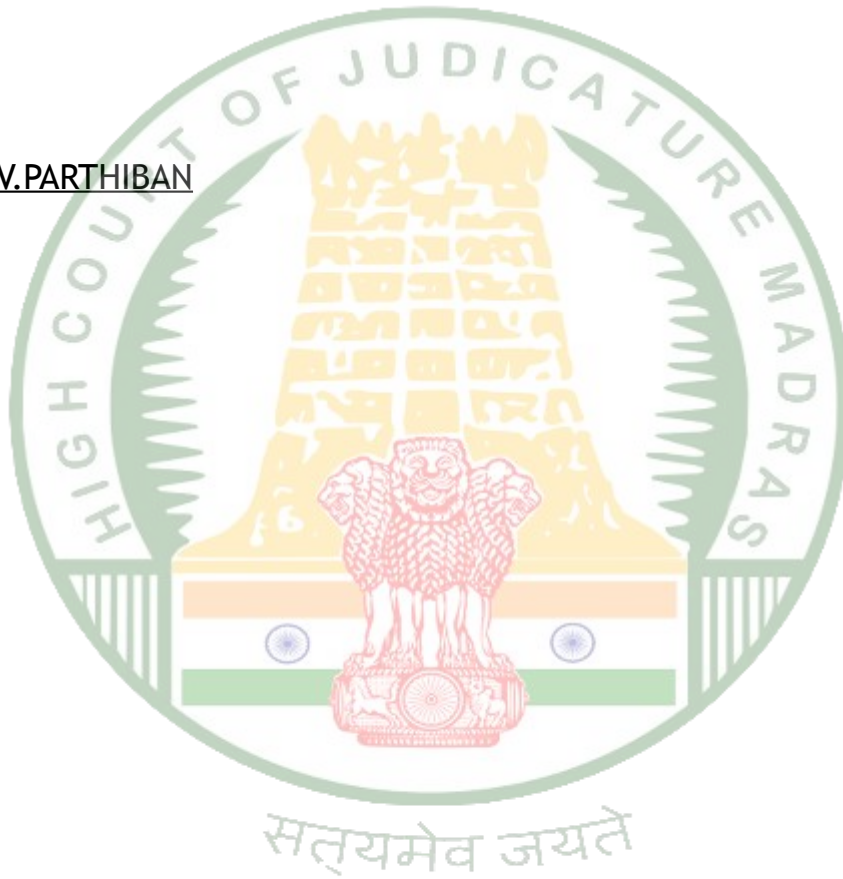
PRE DELIVERY ORDER IN W.P.NO.2316 OF 2019

TO

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

FROM

JUSTICE V.PARTHIBAN



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