

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.12528 of 2006

and W.P.M.P.Nos.14114 of 2006,

2086 & 2087 of 2007

D.Devi

... Petitioner

Vs

1.The Tamil Nadu Public Service Commission,
Rep.by its Secretary,
Chennai - 2.

2.The Director of Industries and Commerce,
Chepauk,
Chennai - 5. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the 1st respondent Memo No.3476/THEPiNaThu/A4/2003 dated 6.4.2006 and quash the same.

For petitioner : Ms.Gemma Hepsibeulah
for Mr.J.Saravana Vel

For respondents : Mr.Balamuralikrishnan
Standing Counsel for R1
Mr.K.Magesh
Special Government Pleader for R2

O R D E R

The prayer sought for in this writ petition is for a issuance of writ of certiorari to quash the Memo No.3476/THEPiNaThu/A4/2003 dated 6.4.2006.

2. According to the petitioner she applied for the post of Combined Subordinate Service Examination - Group II (1996 to 1998) and she was qualified for the post in the entrance examination which was conducted by the first respondent in the year 1999. Though she did not receive any correspondence, by letter dated 17.06.2002 the respondent asked for her community certificate and she also produced the same for verification. Subsequently, the first respondent informed that she has been provisionally selected as a Store Keeper in the Department of Industries and Commerce in the Tamil Nadu Ministerial Service. Thereafter, the petitioner was directed to send original documents for verification. Subsequently, the petitioner was appointed to the post of Store Keeper on 09.09.2002 and she joined service in the

Government Technical Centre at Guindy on 16.09.2002. While so, the first respondent sought for mark sheet of SSLC/Higher Secondary and B.A Degree examination and the same were furnished to the respondent. Subsequently, the first respondent by notice dated 11.2.2005 called for explanation from the petitioner with regard to results of B.A Degree examination. The petitioner submitted her explanation on 24.3.2005 to the first respondent and not being satisfied with the explanation, she was terminated from service. Challenging the said order, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner would submit that though the petitioner passed S.S.L.C examination, due to her family circumstances, she could not pursue her higher education i.e., +2. Thereafter, she completed her graduation through Open University. He would further submit that the petitioner had completed her degree in the month of May 1998 itself, however, the results were published only on 20.8.1998. After completion of examination, she was waiting for the results and at that time, she applied for the said post on 30.07.1998. Subsequently, she attended the entrance examination and got selected and joined as a Store Keeper on 16.09.2002. Subsequently, on verification of the original certificates, the first respondent issued a show cause notice for the reason that as on date 30.07.1998, the petitioner was not qualified for applying to the said post. It is further stated that the petitioner studied B.A degree through Open University and completed her final year examination in the month of May 1998. In the meanwhile, as per notification dated 30.07.1998, she applied for the said post, under the impression that she will clear all the papers in the degree examination. However, the results were published only on 20.8.1998 and she was also got graduation in B.A. Degree (History). As per the notification, the persons who have possessed +2 or higher educational qualification were eligible for the said post. There is no dispute that the petitioner had not completed her higher secondary i.e Plus Two, PUC or its equivalent and she obtained certificate in B.A.Degree (History). But, the crucial question is as to whether the petitioner obtained graduation as on 30.07.1998. According to the petitioner, she had completed her graduation course in the month of May 1998 and that she applied for the said post as per notification dated 30.07.1998. The results were published on 20.08.1998 and she was also possessed the required qualification before writing the entrance examination. Thereafter, she got selected and joined as a Store Keeper on 16.09.2002, subsequently, the petitioner was served with show cause notice calling for explanation from the petitioner and not being satisfied with the explanation, the petitioner was terminated from service.

4.The learned Standing Counsel appearing for the first respondent would submit that on crucial date of

notification dated 30.07.1998, the petitioner has not possessed with required qualification for applying the post i.e. neither passed +2 nor having higher qualification. Therefore, the person, who has obtained graduation subsequent to the notification will not be eligible for applying to the said post. Therefore, the respondents issued show cause notice to the petitioner. The Notification came into effect on 30.07.1998, whereas, the graduation results were published on 20.08.1998, i.e., only after notification. Therefore, explanation was called for from the petitioner and not being satisfied with the explanation given by the petitioner, the Disciplinary Authority terminated the petitioner from service.

5. Heard the learned counsel for the petitioner, the learned Standing Counsel for the first respondent, the learned Special Government Pleader for the second respondent and perused the materials available on record.

6. Admittedly, the petitioner applied for the post of Combined Subordinate Service examination- Group II as per the notification dated 30.07.1998. Though the petitioner passed 10th standard and without getting +2, she completed her Under Graduation through Open University and she had written her final year examination in the month of May 1998, whereas, the results were published only on 20.8.1998. Further, as per the notification dated 30.07.1998, the petitioner had completed her course, however, the results were published only on 20.08.1998. However, on the date of entrance examination, the petitioner possessed the required qualification and even at the time of issuing appointment order, the respondents have to verify the same. However, without verification of the same, the respondents given the appointment, as such, the petitioner also joined duty as Store Keeper on 16.09.2002. Thereafter, show cause notice was issued only 11.02.2005. It is further noted that the petitioner written the entrance examination and also got selected. Even though as on the date of notification, the petitioner was not having required qualification. Considering the peculiar circumstances that the petitioner completed her graduation in May 1998 i.e. before the notification, however, the graduation results were published only on 20.8.1998, just twenty days after the date of notification. Since the results were published even before appearing for the entrance examination, she cleared the entrance examination and got appointment and hence she did not get appointment through back door entries.

7. Therefore, considering the facts and circumstances of the case, even though the petitioner was not eligible for applying the post as on 30.07.1998, however, considering the peculiar nature of the case, this Court is inclined to set aside the order passed by the first respondent dated 06.04.2006 and also direct the respondents to re-instate the petitioner into service without any back wages and also continuity in service. However, this case cannot be a

precedent for any other case.

8. With the above direction, the writ petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst. Registrar (cs)

True Copy//

Sub Asst. Registrar

ms

To

1.The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 2.

2.The Director of Industries and Commerce,
Chepauk, Chennai - 5.

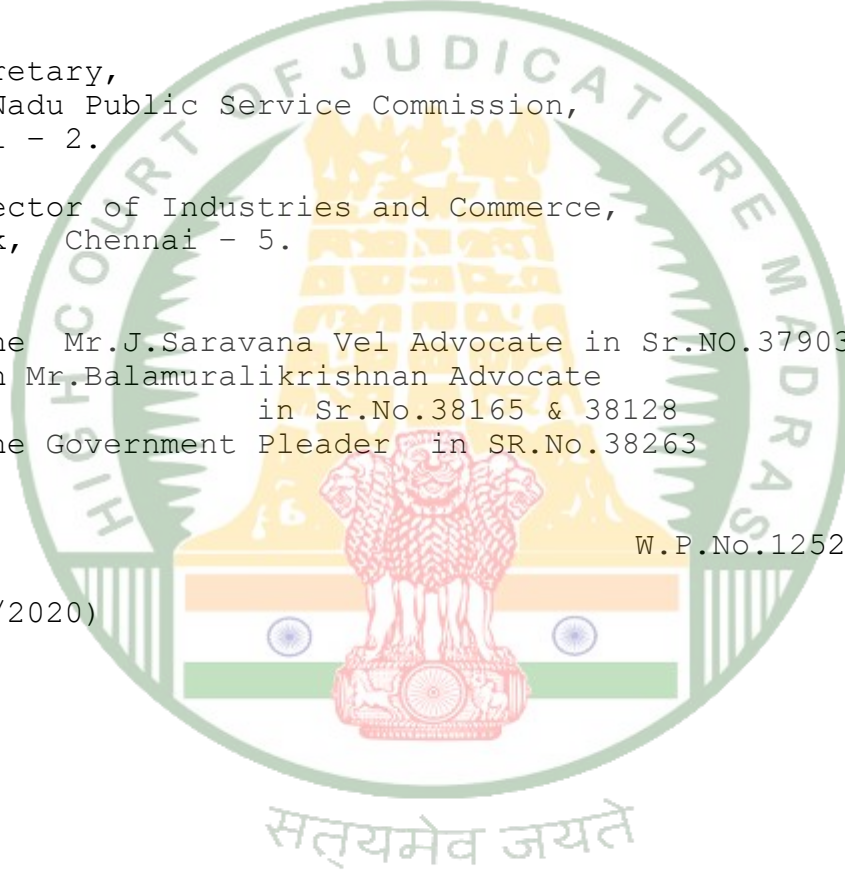
+1cc to the Mr.J.Saravana Vel Advocate in Sr.NO.37903

+2cc to th Mr.Balamuralikrishnan Advocate
in Sr.No.38165 & 38128

+1cc to the Government Pleader in SR.No.38263

W.P.No.12528 of 2006

AJB (CO)
VC (19/12/2020)



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