

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.30134 of 2013
and

MP No.1 of 2013 &WMP Nos.29645 and 29646 of 2019

S.Gomathinayagam ... Petitioner

Vs

1.State of Tamil Nadu
represented by its
Secretary to Government,
Personnel & Administrative
Reforms Department,
Fort St. George
Chennai-600 009.

2.The Secretary
Tamil Nadu Public Service Commission
Near Government Dental Medical College
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-600 003.

...Respondents

Prayer:- This Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus directing the respondents to award marks to the petitioner for question Numbers 14, 39, 79, 182 and 147 in Series A of Group-II examination for the post included in CSSE-I service 2010 conducted on 30.07.2011 and consequently select and appoint the petitioner to the non-interview post.

For Petitioner : Mrs.Dhakshayani Reddy

For Respondents : Mr.J.Ramesh, for R1
AGP
Mr.M.Loganathan for R2
Standing Counsel

O R D E R

This Writ Petition has been filed against the marks awarded in the Group-II examination for the post included in CSSE-I

service conducted on 30.07.2011, pursuant to the advertisement issued on 30.12.2010 by the 2nd respondent viz., Tamil Nadu Public Service Commission.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the 1st respondent and the learned Standing Counsel appearing for the 2nd respondent.

3. The writ petitioner belonged to BC community and he studied in the Tamil Medium and therefore, he applied for the post of Combined Subordinate Service Examination. The petitioner has obtained 229.50 marks in the written examination and in the oral examination, he secured 27 marks and totally, he has secured 256.50.

4. According to the writ petitioner, the 2nd respondent has not selected the writ petitioner on the ground that the writ petitioner has not secured cut off mark i.e., 262.50 marks in Phase-I and 262.00 marks in Phase-II for the selection to the aforesaid post. According to the writ petitioner, he has secured 229.50 marks in the Non Oral Test. Insofar as the 2nd respondent has selected 211 candidates in the Non Oral Test. Some unselected candidates had filed W.P Nos.14410 & 14411 and 8069 of 2014, and this Court allowed the aforesaid writ petitions by directing the respondent-Commission to select the writ petitioner therein. Following the aforesaid order, similar persons had filed writ petitions in W.P Nos.35048 to 35050 and the same was allowed. Therefore, the said order has become final. Following the aforesaid order, yet another writ petition has been filed in W.P No. 34444 of 2019 filed by one G.Karthick and this Court, by an order dated 30.04.2019, allowed the aforesaid writ petition and directed the respondent Commission to select the petitioner therein, if he satisfies all the other requirements and appoint him as Assistant in any one of the Department. Therefore, the aforesaid case is squarely applies to the present case.

5. The learned Standing Counsel appearing for the 2nd respondent has drew the attention of this Court by filing an additional counter. In the aforesaid additional counter, it is stated that there is no dispute that the writ petitioner has secured 256.50 including oral test.

6. According to the respondents, the aforesaid order has become final and the respondent Commission had issued an appointment order to the respective writ petitioners if they satisfy the requirements as directed by this Court. In the light of the aforesaid submissions and the averments made in the additional counter affidavit, there is no dispute that the writ

petitioner has secured 229.50 marks in the Non Oral Test and admittedly, there was a challenge before this Court by contending that the candidate who secured lesser mark was given appointment, but the candidates who secured higher marks were denied the appointment. This Court, by examining in detail passed orders in W.P Nos.35048 to 35050 of 2012 dated 11.11.2014, wherein this Court has held as follows:

4. Both the learned counsel appearing for the parties submitted that the issue raised is no longer in existence as to the anomaly that has crept in the allegation made by the respondents. After extracting the counter affidavit filed acknowledging the said fact, this Court passed an order in W.P.No.14410 & 14411 of 2014 and 8069 of 2014 dated 27.06.2014, which reads as follows:

" 6. According to the petitioners, four other persons by names K.Rama, A.Kavitha, R.Suresh and M.Karupppiah, who had secured lesser marks than petitioners were also called for Certificate Verification, for non-interview posts and were selected, whereas, the petitioners, who were secured 229.5, 225 and 231 were not called for Certificate Verification and they were not selected. It is also stated by the petitioners that one candidate, who has secured 211.50 was selected as against the General Turn, for the post included in Clause 19 of the Prospectus. Thus, according to the petitioners, the non-selection of the petitioners is illegal and therefore, they are before this Court with these writ petitions.

7. In the counter filed by the Joint Secretary, Tamil Nadu Public Service Commission, Chennai, the above stand taken by the petitioners is factually admitted. In paragraph No.5 of the counter, it is stated as follows:

"5. It is respectfully submitted that this was the first time that the process of counselling was introduced and due to large volume of candidates had been summoned for counselling, and due to absence of some candidates summoned for counselling and unwillingness expressed by of some candidates during counselling, the petitioners have been omitted from being taken which is purely a genuine mistake. Counselling system now in practice has been modified appropriately and such mistake will not occur now. The above petitioners as indicated will be accommodated in the next phase of counselling".

8. The learned Senior Counsel appearing for the Tamil Nadu Public Service Commission Mr.R.Muthukumarasamy, would submit that these petitioners would be called for Certificate Verification

and they will be selected and later appointed based on their marks because they have secured more marks than the cut off marks. The said statement is recorded.

9. In this case, in the original counter filed on 2.04.2014, the TNPSC has tried to justify the non-selection of these petitioners. The stand then taken was that the cut off mark was differently fixed for the candidates who have opted to be appointed in Finance Department and the candidates, who opted to be appointed in the Department as enumerated in clause 19 of the Prospectus. In other words, according to the stand taken by the TNPSC, for the posts of Assistant in Finance Department, the cut off mark was 229.5, whereas, for the posts included in clause 19 of the Prospectus, it was 231. It was also submitted in the counter that some of the candidates, who were called for Certificate Verification for the posts of Assistants in Finance Department, at the time of counselling, opted to go to public Departments and therefore, they were selected as against those posts though the cut off mark was higher.

10. The learned counsel for the petitioners Ms.Dhakshayani Reddy, however, pointed out from the records available, that one candidate, who had secured 211.50 has been selected as against the posts included in Clause 19. At that juncture, the TNPSC offered to file another affidavit. It is accordingly, today, the affidavit dated 26.6.2014 has been filed, wherein, as I have extracted herein above, in paragraph No.5, the TNPSC has admitted the mistake committed by them. It is now the admitted case of the TNPSC itself that the candidates who have secured the cut off mark for the post of Assistants in Finance Department, ought not have been considered against the post included in clause 19, because, for clause 19, the cut off mark was higher than the cut off mark prescribed for Assistants in Finance Department.

11. From the above tacit admission made by the TNPSC, it is certain that many candidates like the petitioners ought to have been selected have not been selected, whereas, many candidates who ought not to have been selected have been unduly selected. This is not a mere procedural irregularity, but an illegality depriving the rights of the meritorious candidates.

12. It is not known to the Court as to how many candidates have been affected and how many candidates have been unduly selected and appointed. At this length of time, in my considered opinion, it is not possible to repair the loss or error committed by the TNPSC, fully. It is also not possible at this length of time to cancel the entire selection, so as to issue a direction to the

TNPSC to hold a fresh verification session. Therefore, as has been admitted in paragraph No.5 of the counter, since the petitioners, who have been illegally rejected are now assured selection and appointment. I do not want to probe further and I wish to confine the relief only to the petitioners in this matter. I am only hopeful that the TNPSC, which has got its own tradition, will avoid any such mistake in future, because, a single mistake committed by the TNPSC may result in huge loss and mental agony to many deserving candidates, who toil much to purchase books, prepare for the examination and write the examination. But for the affidavit today filed, conceding to the mistake committed by the TNPSC, this Court would have even gone to the extent of issuing a direction for a detailed probe, but I desist from doing so hoping that the TNPSC will not allow any such mistake to occur in future.

13. In the result, all the writ petitions are allowed. The Tamil Nadu Public Service Commission, as undertaking before this Court, shall call the petitioners soon for Certificate Verification, select them if they satisfy all the other requirements and appoint them as Assistants in any one of the Departments enumerated under Clause 19 of the Prospectus. The said exercise shall be completed within eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

5. As all these petitioners have been secured more cut-off marks for the interview post and the facts involved in W.P Nos.14410 & 14411 and 8069 of 2014, dated 27.06.2014 are similar to the facts on hand, these Writ Petitions are allowed on the very same terms. Consequently, connected miscellaneous petitions are closed” .

7. Challenging the aforesaid order, the writ appeals in W.A.No.603 to 606 of 2017 has been filed by the respondent department before this Court and by an order dated 27.03.2018, this Court confirmed the order passed in the writ petitions and dismissed the writ appeals filed by the respondent department and in the aforesaid writ appeal, it has been held as follows:

“11. Hence, the respondents in W.A. Nos.603 and 605 of 2017 are entitled for the same relief as held by the learned single Judge in the impugned order. However, as against the first respondent in W.A.No.604 of 2017 and the respondent in W.A.No.606 of 2017, who have admittedly scored lesser marks, are not entitled for the relief and hence W.A.Nos.603 and 605 of 2017 are dismissed, while W.A.Nos.604 and 606 of 2017 are allowed. No costs.

Consequently, the connected miscellaneous petitioners are closed.

8. Following the aforesaid judgement, yet another writ petition has been filed before this Court in W.P No.34444 of 2012 and this Court has followed the earlier judgement of this Court, by an order dated 30.04.2019, granted relief to the writ petitioner therein and the relevant portion of the order is extracted hereunder:

12. In the present case also, the writ petitioner has secured more cut off marks for the interview test and since the facts are the same, I have no hesitation in following the ratio laid down. As a matter of fact, the Judgement in W.P.Nos.35048 to 35050 etc., of 2012 dated 11.11.2014, was taken up on Writ Appeal by the Public Service Commission in W.A.Nos.603 to 606 of 2017. The Writ Appeals have been dismissed except for two candidates, who had obtained lesser marks. In the Writ Appeal, it had been held as follows:

"9.It appears that the respondents in W.A.Nos.603 and 605 of 2017 have scored marks more than the last of the candidates selected in the general category. It also appears that out of two of some other candidates who have secured 229.50 marks, one has been selected and the other has not been selected on the ground that the earlier person is senior in age. Further, it is seen that only relying upon the counter affidavit filed by Tamil Nadu Public Service Commission in the earlier order passed in W.P Nos.14410 & 14411 of 2014 and 8069 of 2014 dated 27.06.2014 in respect of similarly situated persons like that of the respondents in W.A.Nos.603 and 605 of 2017, the impugned order was passed. The learned counsel for Tamil Nadu Public Service Commission has submitted that the person who secured 211 marks has been accommodated in the General Merit Category. If that be so, necessarily the respondents in W.A.Nos.603 and 605 of 2017 have to be accommodated by shifting them to the General Merit Category as a matter of proper arrangement. When candidates in the special category gets more marks than the candidates in the general merit category, they have to be shifted to the general merit category. That exercise has not been done. Further, when already relief has been granted to the similarly situated persons like that of the respondents in W.A.Nos.603 and 605 of 2017 herein, which has been admitted by Tamil Nadu Public Service Commission in the counter affidavit filed before the learned Single Judge, the respondents in W.A.Nos.603 and 605 of 2017 are also entitled to the same relief, as held by the learned Single Judge in the impugned common order".

Therefore, considering the aforesaid orders of this Court, similarly placed candidates were appointed by the respondents.

9. In view of the aforesaid facts and decisions cited, I have no hesitation in granting the relief to the writ petitioner. Therefore, this Court is inclined to direct the 2nd respondent/Commission to call for the Certificate Verification of the writ petitioner within a period of eight weeks from the date of receipt of a copy of this order and thereafter, if the petitioner satisfies the eligible requirements, the 2nd respondent Commission shall pass an appropriate provisional selection to the writ petitioner in the available vacancies or in the next vacancies and the same shall be communicated to the user department as expeditiously as possible.

10. In fine, the Writ Petition stands disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Personnel & Administrative
Reforms Department,
Fort St. George, Chennai-600 009.

2.The Secretary
Tamil Nadu Public Service Commission
Near Government Dental Medical College
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-600 003.

+lcc to the Government Pleader Sr.8115

+lcc to M/s.Dakshayani Reddy, Advocate Sr.7102

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WMP Nos.29645 and 29646 of 2019

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srg 05/03/2020