

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH
W.P.No.8500 of 2019

S.Sumaiya Prveen

.. Petitioner

.Vs.

The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 003.

.... Respondent

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the email communication dated 13.02.2019 from the respondent regarding withholding of the petitioner's result (Candidate Registration No.020001008, quash the same and further direct the respondent to publish the result of the petitioner viz., the marks obtained in the written test and the oral test relating to the post of Agricultural Officer (Extension) in the Tamil Nadu Agricultural Extension Services, within the time frame as may be stipulated by this Court.

For Petitioner : Mr.D.Shivakumaran

For Respondent : Mr.M.Loganathan
Standing Counsel

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O R D E R

This Writ Petition has been filed challenging the communication dated 13.02.2019, made by the Tamil Nadu Public Service Commission withholding the result of the petitioner.

2.The case of the petitioner is that the respondent had invited applications to fill up the post of Agricultural Officer. The petitioner had applied for the said post and she had participated both in the written examination and the oral examination. The petitioner got an information from the respondent through e-mail to the effect that the results of

the petitioner is being withheld on the ground that the candidature itself is questioned due to change of communal category. This has become the subject matter of challenge in the present Writ Petition.

3.Mr.D.Shivakumaran, learned counsel appearing on behalf of the petitioner submitted that the petitioner originally belonged to Hindu religion and she was hailing from a backward community. The petitioner thereafter got married to a person, who is a Muslim and she got converted to Islam and thereby, the name of the petitioner was also changed as Sumaiya Parveen. The learned counsel submitted that the earlier Community Certificate was cancelled and a fresh Community Certificate was issued by the Competent Authority by showing the petitioner as a backward Muslim. The learned counsel submitted that this Community Certificate was produced before the respondent and in spite of the same, the results of the petitioner was withheld.

4.The learned counsel further submitted that the respondent cannot question the Community Certificate granted by a Competent Authority. In order to substantiate the said submission, the learned counsel relied upon the judgment of this Court in R.Ayesha .v. The Government of Tamilnadu, rep. By its Secretary, Tamil Nadu Public Service Commission, Chennai, reported in [CTC 2015 MHC 4840] The relevant portions in the judgment is extracted hereunder:

"3. According to the petitioner, the official, who verified the certificates of the petitioner informed that she has applied under the Backward Class Muslim category, but she is not eligible for that post, as she is not a Muslim by birth and rejected her case. Hence, the petitioner made a representation to the respondent to consider her as Backward Class Muslim. Since no order was passed, the petitioner has filed this writ petition.

4. A counter affidavit is filed by the respondent. In paragraph 6 of the counter affidavit, it is stated that in view of the Government Letter No.11373/gperpep/2009-1 dated 22.08.2012, converted Muslim has been classified under "others" category. It is further stated that if the petitioner is treated under "others" category, she is over aged. It is further stated that her date of birth is 03.01.1981 and she is 32 years and the maximum age limit for "others" category is 30 years.

5. Heard both sides.

6. When the matter came up for hearing on 03.06.2015, the learned counsel

for the petitioner has submitted that the issue was covered by my judgment reported in 2014 (1) CWC 695 [MU.Aariffaa v. The Secretary to the Government, Chennai -9.]. However, the learned counsel for the respondent submitted that as against the said order, writ appeal was filed, but he is not aware as to whether any stay was granted. Hence, the matter is posted to day to get instructions as to whether any stay was granted.

7. Today, the learned Standing Counsel produced a letter dated 04.06.2015 issued by TNPSC. The letter discloses that the Commission has filed writ appeal in W.A.SR.No.23222 of 2014 and not even brought to admission.

8. In MU.Aariffaa's case (cited supra), after referring to various judgments of the Apex Court, I have considered the issue in detail and held that a Hindu Nadar, who belongs to Backward Class Community, on conversion to Islam as Labbai Muslim shall be considered as Backward Class Muslim.

9. In the light of the judgment referred to above, a direction is issued to the respondent to treat the petitioner as Backward Community Muslim while considering her for the post of Typist in Group IV Services".

5. Per contra, the learned Standing Counsel appearing on behalf of the respondent submitted that admittedly the petitioner was a Hindu and thereafter, she converted herself to Islam after her marriage. The learned counsel submitted that the Government has issued a letter No.6907/2015-1, dated 04.05.2017, wherein, there is a direction to treat such converted Muslims under "Others" category. Therefore, the respondent had treated the petitioner under "Others" category. Since, the petitioner did not reach the zone of consideration for admission to the oral test, her results were withheld and she was not considered for further selection. The learned counsel therefore submitted that there are absolutely no grounds to interfere with the communication made by the respondent and the petitioner is not eligible to be called for the oral interview.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. There is no serious dispute with regard to the facts of the case and therefore, there is no requirement to again reiterate the facts. This Court therefore, will directly go into the issue that is raised in the present Writ Petition. The issue that has been raised is as to whether the petitioner, who was originally a Hindu and belonged to a backward class community and after marriage got herself converted into Islam and also got a Community Certificate issued by a Competent Authority by showing her as belonging to backward class Muslim, can be brought in under the category of "Others" by virtue of the Government letter dated 04.05.2017 ?

8. It is important to note that the Government letter deals with a situation where a person who belongs to a BC or MBC community latter gets himself or herself converted to Islam. Such persons are directed to be brought within the category of "Others". This Government letter could have been invoked against the petitioner, if the petitioner had not received any Community Certificate after her conversion to Islam. However, in the present case, the earlier Community Certificate issued to the petitioner was cancelled and a fresh Community Certificate has been given to the petitioner by the Competent Authority by showing her as a backward class Muslim. In the light of this Community Certificate, the petitioner cannot be brought under the category of "Others". The Government letter that was referred by the learned Standing Counsel appearing for the respondent cannot be put against the petitioner.

9. It is at this juncture, this Court has to take note of the judgment that was cited by the learned counsel for the petitioner. This Court under similar circumstances had held that a Hindu Nadar, who belongs to the backward class community, on conversion to Islam becomes a Labbai Muslim, should be considered as a backward Muslim. This Court had therefore directed the respondent to treat the petitioner therein as a backward community Muslim. In the present case, the petitioner is in a better footing, since she has also been granted Community Certificate to the effect that she is a backward community Muslim.

10. In view of the above discussion, this Court is of the considered view that the results of the petitioner ought not to have been withheld and the respondent should have published the result of the petitioner and should have called the petitioner for the written and oral test and proceeded further with the selection. Therefore, the impugned communication of the respondent dated 13.02.2019, is hereby quashed and the respondent is directed to publish the result of the petitioner and consider the candidature of the petitioner, if there is any vacancy.

This Writ Petition is disposed of accordingly. There shall be no order as to costs. Consequently,

Sd/-
Assistant Registrar(CS)

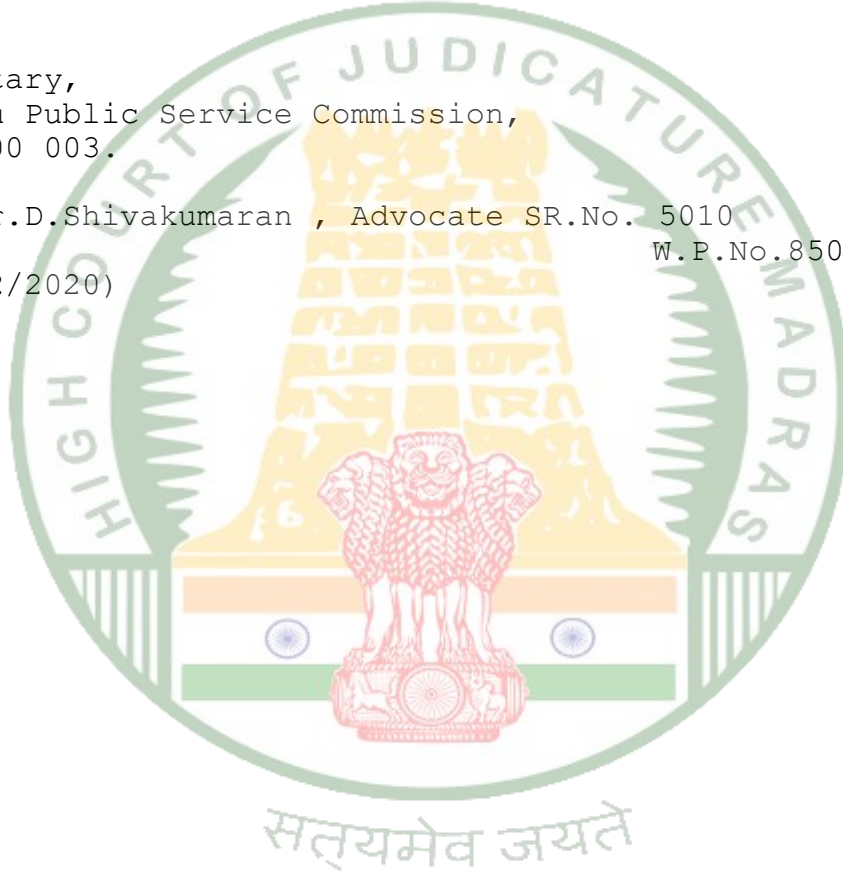
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Sub Assistant Registrar

KP
To

The Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 003.

+1cc to Mr.D.Shivakumaran , Advocate SR.No. 5010
W.P.No.8500 of 2019
A.SK(20/02/2020)



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