

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON	6/2/2020
JUDGMENT PRONOUNCED ON	11/3/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WRIT APPEAL NO.4318 OF 2019

A N D

WRIT APPEAL SR.NO.157260 OF 2019

P. Prabu

...Appellant in
W.A.No.4318 of 2019

a n d

V. Arunkumar

...Appellant in
W.A.SR.NO.157260 of 2019

Vs

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

..Respondent in
W.A.No.4318 of 2019

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

2. The Commissioner
Commercial Taxes and Registration Department
Chepauk, Ezhilagam
Chennai 600 005.

...Respondents in
W.A.SR.NO.157260 of 2019

Prayer in W.A.No.4318 of 2019: Appeal filed under Clause 15 of Letters Patent against the order dated 6/12/2019 passed in W.P.No.32708 of 2019, dated 6/12/2019.

Prayer in W.A.SR.NO.157260 of 2019: Appeal filed under Clause 15 of Letters Patent against the order dated 6/12/2019 passed in W.P.No.31964 of 2019, dated 6/12/2019.

Prayer in WP No.32708 of 2019:

Writ petition has been filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the respondent to interview the petitioner pursuant to his call letter dated 25.10.2019 for the posts included in Combined Civil Services Examination Group - II (Interview Posts) (Group -II Services) conducted pursuant to the Notification No.15/2018 dated 10.09.2018 and issue selection /posting orders if the petitioner secure the required marks after declaring the results with due preference, seniority and consequential monetary and other benefits which the petitioner would have got but for the illegal action of the respondent in preventing him from participating in the interview.

WP.SR.NO.157260/19: Writ Petition sought to be filed under Article 226 of the Constitution of India, praying this Hon'ble Court to issue Writ of Mandamus or to direct the 1st Respondent to permit the Petitioner to participate in the selection process called in notification No.15/2018 and to permit the Petitioner to rectify the mistake committed with regard to providing of information his present employment and to permit the petitioner to attend the oral test as scheduled in Memorandum Number 2400/OTD-D2/2018 dated 25.10.2019 along with the other candidate on or before 30.11.2019 and to select and appoint him to the post called for.

For appellants

... Mr.N.G.R.Prasad
for M/s. Row and Reddy
in W.A.No.4318 of 2019

Mr.Ilamvazhudhi
for Mr.V.Selvaraj
(W.A.SR.NO.157260 of 2019)

For respondents R1
in both cases

... Ms.CNG.Niraimathi
Standing Counsel for TNPSC
in both the appeals

For R2

...Mr.T.M.Pappiah

C O M M O N J U D G M E N T

SUBRAMONIUM PRASAD,J

Writ Appeals challenge the judgment, dated 6/12/2019, passed in W.P.Nos.32708 and 31964 of 2019.

2. Writ petitions are one of a mandamus for a direction to the Tamil Nadu Public Service Commission to interview the petitioners for the posts included in the Combined Civil Services Examination, Group - II (Interview Posts) (Group - II Services), conducted pursuant to the Notification No.15/2018 dated 10/9/2018.

3. Shorn of details, the facts leading to the writ appeals are as under:-

a. Tamil Nadu Public Service Commission, respondent herein invited applications through on-line mode for direct recruitment to the posts included in the Combined Civil Services Examination Group - II (Interview Posts) (Group - II Services).

b. The writ petitioners applied through the on-line mode. Notification permitted persons in Government Services to participate in the selection. In the Notification, there was a column which sought detail as to whether a candidate is a Government employee or not. The other related windows automatically open depending upon the answer. If the answer was "Yes", then certain related windows will open and if the answer was no, then the other related windows will open. It is further pertinent to mention here that the writ petitioners had sought for permission from the Department to take part in the examination. The writ petitioners had given letters seeking no objection certificate from the Department and they had received no objection letters.

c. Petitioners had against the column "Are you a Government employee" filled in "No" because of which they were disqualified and were not allowed to participate in the interview on the ground that they had suppressed information that they are Government employees.

d. Disqualification has been challenged by filing the writ petitions in W.P.Nos.32708 and 31964 of 2019.

e. The learned Single Judge, placing reliance on a judgment of a Hon'ble Division Bench of this Court in (i).

Dr.M.Venilla Vs. Tamil Nadu Public Service Commission, rep. by Deputy Secretary, Chennai and others {2006 (3) LLN - 437}; (ii). M. Sudha Parameswari Vs. The Joint Secretary, Tamil Nadu Public Service Commission, Chennai and another {W.P.(MD) No.22089 of 2016} and (iii). The State of Tamil Nadu and Others Vs. G.Hemalatha and another (Civil Appeal No.6669 of 2019), held that the instructions in the Notification have to be strictly complied with and this Court, cannot in exercise of its jurisdiction under Article 226 of the Constitution of India modify or relax the terms and conditions. He would further state that the said judgments has held that even if the mistakes are unintentional, it has to be end up with the consequences that are provided in the Notification/application form itself. Consequently, writ petitions were dismissed. Challenging the said judgment, instant writ appeals are filed.

4. Heard Mr.N.G.R.Prasad, learned counsel for the appellants and Ms.C.Niraimathi, Standing Counsel for the Tamil Nadu Public Service Commission.

5. Mr.N.G.R.Prasad, learned counsel for the appellants would vehemently contend that the mistake was purely unintentional. He would state that the applications were filled in on-line and there was hardly any opportunity for them to verify the particulars. He would state that there are no special seats reserved for Government employees and there is also no disadvantage for the Government employee for taking part in the examination. He would state that no prejudice has been caused to anybody by the answer given by the appellants. He would also argue that in any event, the appellants had informed the Government and sought permission for taking part in the examinations and they had got no objection certificates. He would therefore, state that in the present case, the writ petitioners need not be disqualified and therefore, this Court while exercising its jurisdiction under Article 226 of the Constitution of India, in the interest of Justice, can direct the respondents to call the appellants for interview.

6. Mr.Prasad would place reliance on a judgment of Delhi High Court in ROHIT YADAV Vs. CENTRAL BOARD OF SECONDARY EDUCATION AND ORS (W.P.(C) No.4189 of 2012), dated 24/7/2012, wherein the age of the petitioner therein had wrongly been mentioned. Delhi High Court held that for a bona fide mistake, an applicant cannot be penalized to the extent that the admission granted to him is cancelled. High Court interpreted the clause in the application form which stated that if the personal data submitted/entered by a candidate is found to be wrong at the time of verification of certificates either during reporting or at any later stage, the allotment of seat/provisional admission is liable to be cancelled to mean

that the word liable should be interpreted as likely and therefore, a lenient view can be taken in such cases. Delhi High Court went on further to state that there was no intention on the part of the petitioner therein to mislead the respondent or give him unfair advantage. The learned Single Judge of the Delhi High Court found that the certificate from CBSE is a genuine document and the petitioner cannot be debarred for filling in a column in the application form wrongly. Mr. Prasad would state that the said judgment applies to the present case on all force.

7. Mr. Prasad would also rely on a Division bench judgment of this Court in THE TAMIL NADU PUBLIC SERVICE COMMISSION Vs. 1. INIYAVAN AND ANOTHER (W.A.(MD) No.1143 of 2019), dated 5/11/2019, wherein again, there was a mistake in filling the Date of Birth. A Division Bench of this Court came to a conclusion that since no advantage will accrue to the writ petitioner and in fact, the incorrect Date of Birth is mentioned, it will lead to the disadvantage of the writ petitioner. The candidature of the writ petitioner therein was not cancelled.

8. Mr. Prasad would also place reliance on another Division Bench of this Court in THE SECRETARY, TAMIL NADU PUBLIC SERVICE COMMISSION, CHENNAI Vs. A. SUTHANTHIRAMOORTHY (W.A.No.3285 of 2019), dated 26/9/2019, wherein again this Court while exercising its jurisdiction under Article 226 of the Constitution of India, permitted correction in the on-line Registration form for a mistake which had been committed inadvertently. This Court also found that since no serious prejudice would be caused to the appellant, being the Public Service Commission, if the mistake is permitted to be corrected, but on the other hand, the respondent in the said writ petition would lose his chance of being appointed in a Government post. This Court felt that in such a cases, power under Article 226 of the Constitution of India can be exercised.

9. Mr. Prasad would also rely on two more judgment of this Court, in P. NETHAJI SUBASH CHANDRA BOSE Vs. 1. TAMIL NADU PUBLIC SERVICE COMMISSION, CHENNAI AND ANOTHER (W.P.Nos.20394 and 20474 of 2017), dated 23/1/2018, wherein a learned Single Judge held that a holistic approach must be adopted in such matters. In that case also, there was a mistake by the candidate while submitting his on-line application, regarding as to whether they had faced any disciplinary action. The candidate has written "No" inadvertently, but had obtained a no objection certificate, permitted him to take the examination. The learned Single Judge observed that in no objection certificate, all the relevant particulars had been mentioned and therefore, there was no suppression of fact. The learned

Single Judge further held that since the mistake was only inadvertent and there was no real consideration of fact, the candidate need not be disqualified.

10. He would also contend that a similar view has also been taken by a learned Single Judge in M.KAVIN KUMAR VS. 1. TAMIL NADU PUBLIC SERVICE COMMISSION, CHENNAI AND ANOTHER {W.P.(MD). Nos.22006 and 22055 of 2018}, dated 27/4/2019, wherein the learned Single Judge held that mistakes which are due to inadvertence and which can be rectified, the candidates cannot be penalized by denying employment.

11. On the other hand, Ms.CNG.Niraimathi, Standing counsel for Tamil Nadu Public Service Commission, would rely on (i). Dr.M.Venilla Vs. Tamil Nadu Public Service Commission, rep. by Deputy Secretary, Chennai and others {2006 (3) LLN - 437}; (ii). M. Sudha Parameswari Vs. The Joint Secretary, Tamil Nadu Public Service Commission, Chennai and another {W.P.(MD) No.22089 of 2016} and (iii). The State of Tamil Nadu and Others Vs. G.Hemalatha and another (Civil Appeal No.6669 of 2019). She places heavy reliance on the judgment of the Hon'ble Supreme Court in THE STATE OF TAMIL NADU & ORS Vs. G.HEMALATHAA & ANR (Civil Appeal No.6669 of 2019), dated 28/8/2019, wherein the Hon'ble Supreme Court has held that conditions of instructions is of paramount importance and the High Court in exercise of Article 226 of the Constitution of India cannot modify/relax the instructions issued by the Commission. She would contend that the instructions are mandatory in nature and therefore, the judgment of the Hon'ble Supreme Court would cover the instant case also.

12. The appellants have filled in the application form through on-line mode. In the on-line form, there is a specific column which states "Are you a Government Employee". After the said column, there are four more column pertain to Government employee, which are as under:-

(i). Candidates not belonging to SCs, SC (A)s, STs, MBCs/DCs, BCs and BC(M)s who have put in 5 or more years of service in State or Central Government are not eligible even though they are within the age limit.

(ii). Persons serving in the Armed forces shall be eligible to apply for the posts under the Government if they are due to complete the specified term of their engagement in the Armed Forces within one year from the last date of the receipt of the application of a particular recruitment and all such candidates should choose this Government employee field as 'No' and furnish their service details in Ex-servicemen field.

(iii). Are you a temporary or discharged State Government employee because of reduction in establishment or for any other

reason but not as disciplinary measure.

(iv). Have you been debarred or disqualified by the Public Service Commission or any other recruiting agency from appearing for examinations and selections for a specific period or permanently?

13. The candidates have against the column "Are you a Government Employee" have answered "No". No doubt, they have also furnished the request seeking no objection certificate from the employer and have also furnished no objection granted to them. It is also not disputed that they do not stand to gain by giving a wrong particular. It also cannot be said that by giving such a wrong particulars, they would cause prejudice either to the Commission or to any other candidate. It is also correct that they will not derive any advantage by giving the wrong answer. In spite of all these, the short issue is that can the Commission take a liberal view by condoning this action, and consequently, whether the High Courts, while exercising discretion under Article 226 of the Constitution of India, can give a mandamus to the Commission to ignore the mistake in on-line form.

14. Paragraph 19 of the Commission's instructions to the applicants which deals with disqualification/debarment as which is given in para 7 of the counter affidavit filed before the learned Single Judge reads as under:-

The following acts will end in disqualification or debarment:

"XXXXXXXXXXXXXXXXXXXXX"

(b) (ii) Suppression of material information regarding

(a) Previous appearances or availing free chances, employment in Government or Local Bodies, Public Corporations, etc.

And that the applicant responsible for such act will be debarred from appearing for the examination and selection held by this Commission permanently or for such period of year as the Commission may decide and hence he was not allowed for Oral Test. Necessary action is being taken separately for issuing show-cause notice to the candidate.

15. Similarly, in paragraph 13 (g) of the Commissioner's Notification No.15/2018 dated 10/8/2018, read as under:-

"para 13 (g) if any of their claims is found to be incorrect, it will lead to rejection of their candidature and suitable penal action including debarment."

16. Counter also states that the appellants have also given a following declaration in their applications, which reads as under:-

"I hereby declare that all the particulars furnished in this application are true, correct and complete to the best of my knowledge and belief. In the event of any information being found false or incorrect or ineligibility being detected before or after the examination or at any stage, any action can be taken against me by the TNPSC including rejection of my application.

I have gone through the instructions to the candidates and Commission's Notification for this recruitment before filling up the application form."

17. The appellants/writ petitioners are not illiterate candidates. The consequences of the mistake even if inadvertent was known to them. No power has been shown to us by which the Commission can relax any of the conditions or relax consequences which will follow from giving a wrong information. No mistake can be found with the Commission for rejecting the candidature of the appellants on the ground of furnishing wrong information.

18. Mr.N.G.R.Prasad, learned counsel is correct in stating that most of the judgments of this Court and Delhi High Court, while exercising jurisdiction under Article 226 of the Constitution of India have condoned inadvertent errors which do not cause any prejudice to the Commission or to other candidates and which also does not give any unfair advantage to the applicant, but the Hon'ble Supreme Court in THE STATE OF TAMIL NADU AND ORS Vs. G.HEMALATHAA & ANR (Civil Appeal No.6669 of 2019) has observed as under:-

"7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission.

8. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in Taherakhatoon (D) By LRs v. Salambin Mohammad² and Chandra Singh and Others v. State of Rajasthan and Another³ in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

9. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said M. Vennila v. Tamil Nadu Public Service Commission, (2006) 3 Mad. LJ 376 (1999) 2 SCC 635 (2003) 6 SCC 545 that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

.....

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."

(emphasis supplied)

19. A perusal of the said judgment would show that the Hon'ble Supreme Court has held that strict adherence to the terms and conditions of the instructions is of paramount importance and the High Court, in exercise of powers under Article 226 of the Constitution of India cannot modify/relax the instructions issued by the Commission.

20. We are bound by the judgment of the Hon'ble Supreme Court, under Article 141 of the Constitution of India, which mandates that the law declared by the Supreme Court is binding on all the Courts, within the territory of India. We therefore, have to accept the submission of the learned counsel appearing for Tamil Nadu Public Service Commission that instructions are mandatory in nature and therefore, cannot be relaxed.

21. In view of the above, writ appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs.

To

1.The Secretary,
Tamilnadu Public Service Commission,
Frozen Bridge Road,
VOC Nagar, Park Town,
Chennai - 600 003.

2.The Commissioner,
Commercial Taxes and
Registration Department,
Chepauk, Ezhilagam,
Chennai - 600 005

+1cc to M/s.Row & Reddy, Advocate, SR.NO. 21565

Pre-delivery common judgment in
W.A.Nos.4318 of 2019
and W.A.SR.NO.157260 of 2019

SV(CO)
KKV/24/09/2020