



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2020

CORAM :

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD) No.25427 of 2019

and

W.M.P(MD).Nos.21987, 21988, 21998 and 21989 of 2019

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A.Pandi Selvi

... Petitioner

vs.

1.The State of Tamil Nadu,
rep., by its Secretary,
School Education Department,
Secretariat,
Chennai.

2.The Chairman,
Teachers Recruitment Board,
O/o., 4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai-6.

3.The Member Secretary,
Teachers Recruitment Board,
O/o., 4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai-6.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order issued by the second respondent in his proceedings Nil dated 20.11.2019 and quash the same as illegal in so far as it is relates to petitioner and consequently to direct the respondents to appoint the petitioner as P.G.Assistant (Tamil) taking into consideration the petitioner's qualification and the marks within the period that may be stipulated by this Court.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader (for R1)

Mr.V.R.Shanmuganathan
Special Government Pleader (for R2 & R3)



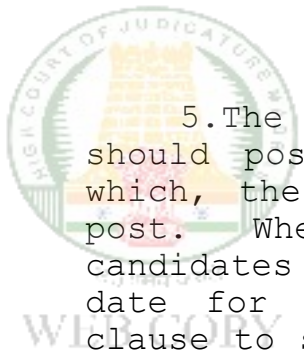
O R D E R

The petitioner herein, who was provisionally selected for the post of PG Assistant in Tamil in the selection held, pursuant to the Notification No.10/2019, dated 12.06.2019, was declared to be ineligible after certificate verification, through the impugned orders, on the ground that the petitioner herein had passed her M.A degree, after the cut-off date. According to the respondents, the prescribed educational qualification should have been obtained prior to the last date for submission of filled-in online application i.e., on or before 15.07.2019. Since the petitioner herein had produced her M.A., Post Graduate certificate on 08.11.2019, her candidature was declared to be ineligible since it is after the cut-off date.

2.The learned counsel for the petitioner would rely upon the marks statement issued on 15.03.2019 by the Periyar University for the petitioner's degree in M.A (Tamil) and submitted that since the certificate itself has been issued prior to the cut-off date, the impugned list holding the petitioner ineligible cannot be sustained.

3.The learned Special Government Pleader for the respondents would rely on the Notification dated 12.06.2019 and submit that since it was specifically explained in the notification that all the qualifying/equivalent certificates should have been obtained prior to the last date for submission of filled-in online application, the petitioner's submission of the certificates after the cut-off date, is against the requirements prescribed in the notification and therefore, the impugned order holding the petitioner ineligible, cannot be found fault with.

4.The Notification dated 12.06.2019 calling for applications to the post of Post Graduate Assistants has prescribed the procedure stipulating that the candidates not having the prescribed qualifications as on the last date for submission of filled-in online application shall not be eligible to apply for examination. Explaining this clause, the notification also states that all qualifying/equivalent certificates should have been obtained prior to the last date for submission of filled-in online applications. The petitioner herein had produced a certificate, dated 22.11.2019 from Periyar University stating that the result for the petitioner's final year examination in M.A (Tamil) was published on 08.03.2019 and that the provisional certificate was issued on 25.10.2019. Ratifying such a certificate, the mark statement of the petitioner pertaining to M.A (Tamil) has also been produced before this Court, which evidences that the said certificate was issued on 15.03.2019. In view of these, there can be no doubt that the petitioner herein had qualified herself in the final year examination in M.A (Tamil) as on 08.03.2019 itself.



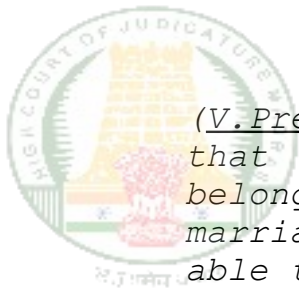
5.The requirement of the respondents is that the candidates should possess the prescribed qualifications, in the absence of which, the candidates will not be entitled to even apply for the post. When the notification in clear terms stipulates that the candidates should possess the prescribed qualifications on the last date for submission of the online application, the explanation clause to such an eligibility condition should be read inconsonance with the qualification condition prescribed therein. In other words, when the notification calls upon the candidates to hold the prescribed qualification, there cannot be an explanation contrary to such a stipulation, stating that such an equivalence certificate or qualifying certificate should have been obtained prior to the last date for submission of the online application. When the fact remains that the petitioner had qualified herself in the M.A final Examination, way back on 08.03.2019 itself, the certificate is only an authenticity, subscribing and ratifying that the petitioner had qualified herself.

6.The Division Bench of this Court in the decision reported in **(1995) 2 MLJ 325** in the case of **V.Premnand Vs., State of Tamil Nadu** had held that the rejection of the application on the ground that the certificate was not enclosed is only a procedural lapse and production of the certificate is only a piece of evidence. The said view has also been taken by another Division Bench of this Court in the decision reported in **(2010) 2 MLJ 146** in the case of **Secretary, TNPSV Vs. M.Chitra**.

7.In the case of **Dolly Chhanda Vs. Chairman Jee** reported in **(2005) 9 SCC 779**, it was held that non production of certificates for the purpose of substantiating the eligibility qualification cannot be a ground for rejection of the candidature, since a rigid principle cannot be applied and every infraction of such procedure need not necessarily result in rejection of the candidature.

8.Following the aforesaid decision, a Division Bench of this Court in the case of **G.Udayan Vs. The Member Secretary, Tamil Nadu Uniformed Services Recruitment Board (TNUSRB)**, reported in **2013 Writ L.R.570** had also found that the petitioner therein was entitled for provisional selection. The relevant portion of the order reads thus:

'11. The issue as to enclosing the certificate for selection in a particular category is directory or mandatory, came up before this Court in the decision reported in (2007) 1 MLJ 820 (Dr.A.Rajapandian v. State of Tamil Nadu). In the said decision the registration certificate of Veterinary Assistant Surgeons was not enclosed by some candidates, who applied for selection to the post of Veterinary Assistant Surgeons. The Division Bench allowed batch of cases, relying on the earlier Division Bench order reported in (1995) 2 MLJ 325



(V.Premanand v. State of Tamil Nadu), wherein it was held that 'as long as it is not in dispute that the petitioner belongs to the category of 'children born of inter-caste marriage between SC/ST and forward community', and he was able to produce the certificate before the application was scrutinised for admission, the rejection on the ground that certificate was not enclosed is only a procedural lapse and production of certificate is only a piece of evidence'. Same is the view taken by another Division Bench of this Court in the decision reported in (2010) 2 MLJ 146 (Secretary, TNPSC v. M.Chitra) regarding non-production of community certificate.

12. The Supreme Court in the decision reported in (2005) 9 SCC 779 (Dolly Chhanda v. Chairman, Jee) considered similar issue and in paragraph 7 held thus,

"7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e., in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc., necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature."

The said decision was rendered by following an earlier decision reported in (1980) 2 SCC 752 (Charles K. Skaria v. Dr.C.Mathew). Similar contention raised in the said decision by the unsuccessful candidates seeking to quash the selection of candidates, who have not enclosed the certificates for the award of extra mark was considered in paragraphs 20 and 24, which read thus,

20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be



obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

* * *

24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from overemphasis on the external rather than the essential. We think the Government and the Selection Committee rightly treated as directory (not



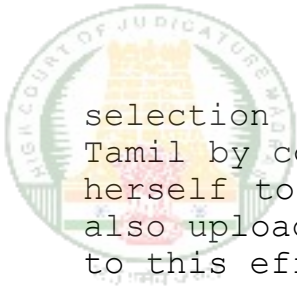
mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like marklists from universities, why, even bail orders from courts and government orders from public offices.'

9. When the educational qualification are prescribed in a notification for selection to any post, what is required to be kept in mind is that the candidate applying for the said post should be qualified as on the date of its consideration. Consequently, what requires to be established on the part of the candidate is that her certificates should reveal that he/she had qualified himself/herself on the cut-off date. The submission or uploading of certificates for the purpose of substantiating such a qualification is only a procedural aspect, as held in the aforesaid decisions and an infraction of the said procedure need not necessarily hold the candidate to be ineligible for the post.

10. The impugned order merely seems to rely upon the explanation given in the notification that the certificate should have been obtained prior to the last date for submission of the online application. I do not find any logic in such a explanation, particularly in the light of the qualifications prescribed in the same notification which states that the candidates should possess the qualifications as on the last date of submission. By going with such a qualification prescribed, this Court can only hold that, obtaining of the certificates after the cut-off date will not be fatal. As such, the explanation note in the notification should be read only in consonance with the educational qualifications prescribed therein and the explanation note cannot be read to give an inconsistent interpretation.

11. In the instant case, the petitioner had come with a specific stand that though she had passed the final examination in M.A. (Tamil) on 08.03.2019 itself, the certificate was belatedly issued by the University and such laches cannot be put against the petitioner herein, particularly, when she had already qualified herself before the cut-off date, which is also one of the condition prescribed in the notification. Under these circumstances, the impugned order holding the petitioner ineligible for the post of P.G Assistant cannot be sustained.

12. For all the foregoing reasons, the impugned order passed by the second respondent herein in proceedings Nil dated 20.11.2019 stands quashed. Consequently, the respondents herein are called upon to permit the petitioner herein to participate in the further



selection process for the appointment to the post of PG Assistant Tamil by considering that the petitioner has educationally qualified herself to the post of P.G Assistant Tamil. The respondents shall also upload and update the petitioner's candidature in their records to this effect.

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13.The Writ Petition stands allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Record)

/ True Copy /

/ /2020

Sub Assistant Registrar(CS-III))

To

- 1.The Secretary,
School Education Department,
Secretariat, Chennai.
- 2.The Chairman,
Teachers Recruitment Board,
O/o., 4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai-6.
- 3.The Member Secretary,
Teachers Recruitment Board,
O/o., 4th Floor, E.V.K.Sampath Maligai,
College Road, Chennai-6.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate
(SR-2677[F] dated 23/01/2020)

W.P. (MD) No.25427 of 2019
23.01.2020

rmk
ES/SAR 3/24.01.2020/7P/5C