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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.1568 & 2580 of 2021
and W.M.P.No.1776 of 2021

W.P.No.1568 of 2021:

J.Jayashree

... Petitioner

-vs-

1. State of Tamil Nadu,
rep. By its Secretary,
Social Welfare and Nutritious Meal Programme Department,
Fort St. George,
Chennai 600 009.

2. Tamil Nadu Public Service Commission,
rep. By its Secretary,
TNPSC Road, V.O.C. Nagar,
Park Town,
Chennai 600 003.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, directing the 2nd Respondent to permit the Petitioner to upload the documents in their portal or accept the documents physically for the purpose of Certificate verification and permit the Petitioner to participate in the further recruitment process initiated by Notification No.24/2019, dated 13.08.2019.

W.P.No.2580 of 2021:

R.Poonguzhali

... Petitioner

vs.

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

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the Respondent-TNPSC to consider the documents annexed to the Petitioner's representation dated 30.01.2021 for Certificate verification as per the Notice of Certificate Verification bearing Memorandum No.5257/APD-A1/2019, dated



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08.01.2021 of the Respondent/TNPSC.

For Petitioner in W.P.No.1568/2021 :	Mr.A.Mohamed Ismail
For Petitioner in W.P.No.2580/2021 :	Mr.M.Radhakrishnan
For 1 st Respondent :	Mr.A.Arul Doss,
in W.P.No.1568/2021	Government Advocate
For 2 nd Respondent	
in W.P.No.1568/2021	
and sole Respondent :	Mr.M.Loganathan
in W.P.No.2580/2021	

C O M M O N O R D E R

As the issue involved in both Writ Petitions is one and the same, the cases are taken up together for disposal by this common order. For the sake of brevity, the petitioners are referred to by their name, viz Jayashree (W.P.No.1568 of 2021) and Poonguzhali (W.P.No.2580 of 2021) in order to avoid confusion.

2. Jayashree has sought for a direction to the 2nd Respondent to permit her to upload the documents in their portal or accept the documents physically for the purpose of Certificate verification and permit her to participate in the further recruitment process initiated by Notification No.24/2019, dated 13.08.2019.

3. Poonguzhali has sought for a direction to the Respondent/TNPSC to consider the documents annexed to her representation dated 30.01.2021 for Certificate verification as per the Notice of Certificate Verification bearing Memorandum No.5257/APD-A1/2019, dated 08.01.2021 of the Respondent/TNPSC.

4. The case of Jayashree is that, she could not upload the Certificates within the time stipulated and when List-I was published, her name was not found in the same. As the Petitioner has missed the bus, on coming to know about the publication of the second List, she requested another chance to upload her Certificates, so that, her candidature may be considered on merits.

5. The Petitioner has relied upon the tentative time line prescribed in the Notification as 'December 2019' with regard to publication of results. Results have been published on 15.12.2019 and Jayashree's candidature was rejected on 18.01.2020. As the time line was given a go-by by the Respondents and the second list being published, Jayashree ought to have been given an opportunity to upload the documents,



dehors the condition in Clause 15 of the Notification dated 13.08.2019 issued by the Tamil Nadu Public Service Commission. For better appreciation, the said Clause is extracted hereunder:

"15. UPLOAD /SUBMISSION OF DOCUMENTS:

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Applicants should upload/submit the required documents for proof in respect of all the claims made in the application with reference to this Notification as and when called for. If the required Certificates are not uploaded or submitted by the Applicants, within the stipulated time, their Applications will be rejected."

6. Learned counsel for the Petitioner in W.P.No.1568 of 2021 submitted that, after Certificate verification process, interview will have to take place and Jayashree may or may not have a chance to get selected, but rejecting her candidature only on the ground that, she has not uploaded the Certificates would cause great prejudice and persons, who have scored lesser marks would be allowed to take the place of meritorious candidate.

7. While so, learned counsel for Poonguzhali drew the attention of this Court to 13(d) of the Notification 13.08.2019 issued by the Tamil Nadu Public Service Commission, and submitted that, there is no need for an individual communication by the candidate, however, in order to enable the candidate to verify the website, SMS/E-mail have to be sent. He further submitted that, even though Jayashree has received SMS/E-mail as admitted by her in her Affidavit, having missed the chance, she cannot have a second chance to compete with Poonguzhali.

8. That apart, the Notification 13.08.2019 issued by the Tamil Nadu Public Service Commission is binding on both the Petitioners herein and hence, when the time limit prescribed in the timeline has not been adhered to, as stated by Jayashree, she must be permitted to upload the documents based on the second list and call for an interview. He further submitted that, there is no need to verify the website regularly when the first List has already been published, wherein the name of Jayashree did not find place. According to the learned counsel, when the name of the Petitioner finds place in the second List, communication as contemplated under Section 13(d) of the Notification issued by TNPSC, ought to have been given. In the absence of the same, Poonguzhali will have a better chance when compared to Jayashree and that, Poonguzhali may be called for an interview.

9. On the other hand, Mr.M.Loganathan, learned Standing



Counsel for the Respondent/Tamil Nadu Public Service Commission submitted that, the Notification is core for the purpose of selection and it has to be read as a whole and it cannot be read in isolation. He further submitted that, the time limit prescribed in the E-mail as referred to by the Petitioner is only directory in nature and depending upon the circumstances, the time line and date will differ. Whereas, in terms of Clause 15 of the Notification, time for uploading the documents has not been fixed, but once, date has been fixed for uploading the documents, it is mandatory on the part of the candidate to upload the documents and depending upon further circumstances, communication as regards Certificate verification will be made.

10. Learned Standing Counsel for TNPSC drew the attention of this Court to the judgment dated 28.08.2019 rendered by the Apex Court in Civil Appeal No.6669 of 2019 in the case of State of Tamil Nadu vs. G.Hemalathaa, relevant portion of which, reads thus:

"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."

11. As far as Jayashree is concerned, she was asked to upload the documents between 28.10.2020 and 06.11.2020, however, she did not upload the documents in spite of the communication through SMS/E-mail, as admitted by her. Hence, according to the learned counsel, Jayashree has no locus to claim any relief much less the relief sought in the Writ Petition. Hence, her candidature may not be considered.

12. Since Jayashree did not have a chance, in view of non-uploading of documents, Poonguzhali shall be considered, even though, she was less meritorious. However, Poonguzhali did not upload the documents within the time stipulated, i.e. between 13.01.2021 and 25.01.2021.

13. It is not the case of the Respondent/TNPSC to deprive any candidate much less the candidature of both candidates herein. If there is any violation of the Notification, naturally other candidates who are available in the queue will be considered and in that process, both the Petitioners lost the



chance to attend the interview.

14. As the time limit prescribed cannot be extended and the High Court cannot exercise its power under Article 226 of the Constitution of India to modify the Instructions given by the Tamil Nadu Public Service Commission, both the Petitioners herein have no chance to be considered by the Commission in the present selection process and they cannot be called for interview.

15. In reply, learned counsel for Poonguzhali submitted that, the word 'they' used in the order referred to above, binds both the parties. That being the case, when the guidelines have not been followed, the Respondent/TNPSC cannot blow hot and cold to deprive the candidates to attend the interview. As Jayashree did not upload the documents, the name of Poonguzhali has been considered.

16. While so, learned counsel for the Petitioner Jayashree submitted that, Jayashree is more meritorious than Poonguzhali and when an opportunity is given to Poonguzhali, certainly, preference will have to be given to Jayashree to upload the documents and no prejudice will be caused to the Respondents, if both the Petitioners are called for interview. Learned counsel also pointed out that, when the first List was prepared, the ratio was fixed as 1:3, but, when the second List was prepared, ratio was fixed at 1:5.

17. Heard the learned counsel on either side and perused the material documents available on record.

18. It is seen that Jayashree applied for the post of Assistant Director in the Social Welfare and Nutritious Meal Programme Department and came out successful in the written examination. Though she was asked to upload her documents between 28.10.2020 and 06.11.2020, it was not done within the time stipulated. This Court is of the view that the notification has got to be strictly adhered to without any violation. Admittedly, there is no mention of separate publication of List-I and List-II and nowhere, it has been stated in the Notification that in case the candidate has missed the bus, opportunity would be given to other candidates by way of publication of List-II. Since Jayashree did not avail the opportunity properly, in List-II, the name of Poonguzhali was included, who is admittedly less meritorious than Jayashree. Interestingly, Poonguzhali also did not upload her documents within the specified time between 13.01.2021 and 25.01.2021.

19. Learned counsel appearing for Poonguzhali submitted that insofar as List-I, wherein the name of Jayashree finds place, is



concerned, the last date prescribed for uploading documents was 06.11.2020 and since Jayashree failed to upload documents, an email has been received by Poonguzhali on 11.01.2021 for uploading documents between 13.01.2021 and 25.01.2021. According to the learned counsel for TNPSC, instead of redoing the entire exercise, the system of publication of List-I and List-II has been introduced and in case a candidate in the List-I fails to adhere to the Notification, a chance would be given to other candidates in the List-II. In this case, both the petitioners failed to upload their respective documents in time inspite of receipt of email from TNPSC and if a second chance is given to them, there is every possibility of other similarly placed candidates to knock at the doors of this Court with the same request.

20. It is not in dispute that Jayashree is more meritorious than Poonguzhali and therefore, preference should be given to Jayashree. Even though the name of Poonguzhali found place in the 2nd List, Poonguzhali also did not upload documents within the time stipulated and therefore, the candidature of Jayashree alone has got to be considered for a second chance to upload her documents.

21. In the result, the Writ Petition filed by Jayashree (W.P.No.1568 of 2021) is allowed. The Respondents are directed to permit Jayashree to upload documents in their official portal and call for other selection process, if any, in case of any vacancy. Jayashree, in addition to uploading of documents in the website, is also permitted to hand over the copies of documents to TNPSC in the physical form. The very fact that Jayashree's name finds place in the 1st List itself is sufficient to infer that she is meritorious, as Poonguzhali has neither scored equal marks nor more marks than Jayashree, otherwise her name would have found place in List-I itself. Hence, finding no merits in the case of Poonguzhali, the Writ Petition filed by her in W.P.No.2580 of 2021 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Social Welfare and Nutritious Meal Programme Department,
Fort St. George,
Chennai 600 009.
2. Tamil Nadu Public Service Commission,
rep. By its Secretary,
TNPSC Road, V.O.C. Nagar,
Park Town,
Chennai 600 003.

+2ccs to Mr.M.Loganathan, Advocate, S.R.No.15076,15077
+1cc to Mr.A.Mohamed Ismail, Advocate, S.R.No.15053

W.P.Nos.1568 & 2580 of 2021

PVS (CO)
SU (23/07/2021)