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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.4367 of 2020

and

W.M.P.Nos.5164 & 5165 of 2020

I.Thirumalaiswamy

... Petitioner

Vs

The Member Secretary,
Tamil Nadu Public Service Commission,
Frazeer Bazaar Street, VOC Nagar,
Park Town, Chennai.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent to include the petitioner's register number 0601015019 for the counselling with respect to the notification No.19/2019 dated 14.06.2019 issued by the respondent to be held on 19.02.2020.

For Petitioner : Mr.S.C.Vishwanth

For Respondent : Mr.Balamurali Krishnan
Standing Counsel

O R D E R

By consent of both the parties, this Writ Petition is heard through Video Conferencing today.

2. The petitioner herein is aggrieved against his non-selection to the post called for under Notification No.19 of 2019 dated 14.06.2019. Similarly placed persons, who were not considered for selection owing to non-production of Persons Studied in Tamil Medium (PSTM) Certificates, Community Certificates, Under Graduation and Post Graduation Certificates, were also deprived of the selection and when they had approached this Court by filing the Writ Petitions, ventilating their grievances, this Court, in the cases of G.Tamilarasi Vs. Tamil Nadu Public Service Commission in W.P.No.5726 of 2020 dated 11.12.2020 and J.Karthik Vs. Tamil Nadu Public Service



Commission in W.P.No.4866 of 2020 dated 05.02.2021, had allowed the Writ Petitions. It is stated across the bar that the Writ Appeal in W.A.No.1329 of 2021, as against the order in W.P.No.4866 of 2020, was dismissed by the Hon'ble Division Bench of this Court on 14.06.2021.

3. The issue now seems to be settled by the learned Single Judge of this Court and the relevant portion of the order in G.Tamilarasi's case (supra) reads as follows:-

"8. When the matter was taken up for hearing earlier, this Court has directed the Commission vide interim order dated 04.03.2020, to permit the petitioner to attend the counseling on any one of the dates scheduled without prejudice to the rights of the parties in the writ petition. Thereafter, it appears that the petitioner was permitted to participate in the counseling and the certificates as required by the Commission were also produced to the satisfaction of the Commission. Ultimately, the petitioner being found eligible for appointment in the category for which she laid her claim, the provisional appointment has also been issued appointing the petitioner as Junior Assistant in Public Health and Preventive Medicine Department, in pursuance of her selection pursuant to the subject Notification. However, the appointment is stated to be subject to the disposal of the present writ petition.

9. On behalf of the respondent Commission, a counter affidavit has been filed. In the counter affidavit, it is stated that when the candidates were informed of the selection procedure as stipulated in the Notification itself, it is the responsibility of the candidate to ensure that all the certificates were uploaded within the time stipulated by the Commission. As far as the Commission is concerned, the PSTM claim of the petitioner could not be considered in the absence of 10th Std certificate as a proof of petitioner having done her schooling in Tamil Medium of Instructions. Therefore, she could not be considered against the PSTM Quota.

10. Mr.NGR.Prasad, learned counsel for the petitioner, would submit that the petitioner cannot be faulted for the error, even assuming that the certificate in question has not been



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uploaded by the E-Seva Centre. The E~Seva Centre has in fact issued acknowledgment for having uploaded all the certificates, vide its receipt dated 07.12.2019. Therefore, the petitioner was under the bonafide impression that every requirement has been complied with.

11. In any event, he would submit that, now, the petitioner has been found to be eventually eligible for appointment and appointment order has also been issued, the writ petition may be disposed of in favour of the petitioner, taking note of the positive development.

12. Although in the facts and circumstances of the case, the petitioner cannot be faulted with for not uploading 10th Std PSTM certificate, at the same time, the Commission cannot also be blamed for originally not considering the claim of the petitioner. As far as the Commission is concerned, the required certificate did not reach the Commission-s office and therefore, there was no scope for the Commission to consider the petitioner against PSTM Quota.

13. In any case, this Court has intervened and passed interim orders and on the basis of which, the petitioner was allowed to participate in the counseling provisionally and ultimately the petitioner has been favoured with the provisional appointment order also. When the petitioner is found to be fully eligible for appointment and being appointed also as Junior Assistant, this Court is of the view that, in all fairness, the issue must rest at that.

14. This Court is not inclined to fathom out as to who is to be blamed in the contention between petitioner and the respondent Commission for non availability of the certificate in question at the crucial time. According to this Court, such blame game is of no consequence, in view of the subsequent development wherein the petitioner has been issued a provisional appointment order.

15. In the above circumstances, the considered view of this Court is that the petitioner should be allowed to enjoy the fruition of the appointment without any strings



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attached to her appointment. This is particularly so, that the petitioner being a Destitute Widow, has earned her appointment in her own right.

16. Therefore, it is hereby declared that the appointment of the petitioner dated 28.11.2020, as Junior Assistant, Public Health and Preventive Department, is not to be construed as provisional appointment on account of pending of this writ petition. The Commission is directed to issue necessary clarification in this regard expeditiously."

The aforesaid extract is self explanatory and the ratio laid down therein is squarely applicable to the facts involved in the present Writ Petition. As such, the petitioner herein would also be entitled for the relief in accordance with the aforesaid order.

4. At this juncture, it is brought to the notice of this Court that, based on the interim orders passed by this Court, the petitioner was allowed to participate in the counseling and consequently, provisional appointment dated 29.02.2020, was also given to him and the posting order alone remains to be issued.

5. In the light of the above observations and the judgment of this Court in J.Karthik's case (supra) passed in W.P.No.4866 of 2020, the provisional appointment dated 29.02.2020, to the post of Junior Assistant in Police Department, is declared as a valid appointment and not to be construed as a provisional appointment. Consequently, there shall be a direction to the concerned respondent/Government Department to issue posting orders, as expeditiously as possible, in any event, within a period of 8 weeks from the date of receipt of a copy of this order.

6. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO-III)

//True Copy//

Sub Assistant Registrar

sbn/hvk



To

The Member Secretary
Tamil Nadu Public Service Commission,
FRazeer Bazaar Street, VOC Nagar,
Park Town, Chennai.

+1cc to Mr.S.C.Vishwanth, Advocate, S.R.No.30917

W.P.No.4367 of 2020
and
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PVS (CO)
CT(12/08/2021)