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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03/09/2021
Delivered on	16/09/2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.A.No.1629 of 2021

(Heard through VC)

Tamil Nadu Public Service Commission,
Rep. by its Secretary,
TNPSC Road, V.O.C.Nagar,
Park Town,
Chennai - 600 003.

.. Appellant/2nd Respondent

Versus

1. J.Jayashree
2. State of Tamil Nadu,
Rep. by its Secretary,
Social Welfare and Nutritious Meal
Programme Department,
Fort St. George,
Chennai - 600 009.

.. 1st Respondent/Petitioner

.. 2nd Respondent/1st Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the Order dated 09.03.2021 made in W.P.No.1568 of 2021.

W.P.No.1568 of 2021: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondents 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.

For Appellant : M/s.R.Gouri
Standing Counsel



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For respondents : Mr.A.Mohammed Ismail for R-1

Mr.C.Jayaprakash
Government Advocate for R-2

J U D G M E N T

K.KALYANASUNDARAM, J.,

This intra-Court Appeal is directed against the order of the Writ Court passed in W.P.No.1568 of 2021, dated 09.03.2021, wherein a direction was issued to the appellant to permit the writ petitioner /respondent herein to upload the documents in the official portal.

2. The appellant-Tamil Nadu Public Service Commission issued a notification dated 13.08.2019 inviting applications for direct recruitment to the posts of Assistant Director (Women Candidates only) and Child Development Project Officer (Women Candidates only) in the Department of Social Welfare and Nutritious Meal Programme. The writ petitioner applied for the said post. She appeared for the written examination, which was held on 16.11.2019. The result for the selected candidates was published on 15.10.2020, wherein, the first respondent herein was also selected and the selected candidates were directed to upload the certificates and other documents through e-seva centres from 28.10.2020 to 06.11.2020 in the designated e-seva centres. However, admittedly, the writ petitioner did not upload the certificates in time.

3. It is the case of the writ petitioner that as per the notification issued by the appellant herein, results ought to have been published in the month of December 2019, but unfortunately, the results were not published for a long time, resulting the candidates have naturally lessened the frequency in verifying the website of the Commission. Thus, she did not notice the publication of the results and the email communication sent by the appellant had also fallen in the spam mail and she could not notice the same. That apart, the short text message (SMS) sent to her mobile number though was received on 22.10.2020, but the appellant did not use the usual tag as "TNPSC" instead it had tag as "AT-LSTPSC". So she thought it to be a commercial advertisement and omitted to read the said message also. She has also stated that her father had heart ailments and her sister was in the advanced stage of pregnancy and therefore, she failed to take note of the results published



and directions given for uploading the certificates then and there. Therefore, she approached for issuance of a Writ of Mandamus directing the appellant herein to permit her to upload the documents in their portal.

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4. The case of the appellant was that the prayer sought for in the Writ Petition is ex-facie contrary to the mandatory clause of the notification, terms and instructions to the candidates governing the entire recruitment process. The instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. In this regard, they also relied on the decision of the Hon'ble Apex Court in 2019 SCC Online SC 1113 [State of Tamil Nadu and others Vs. G.Hemalathaa and another], however, the learned Single Judge allowed the Writ Petition. Challenging the same, the present Writ Appeal has been filed.

5. Mr.V.Vaithiyalingam, learned Standing Counsel appearing for the appellant has drawn the attention of this Court to Clauses 12(h), 13(d) and 15 of the Notification dated 13.08.2019 in support of his argument that unless the applicants upload the documents within stipulated time limit will entail rejection of the application. He further added that though the learned Single Judge has held that the notification has got to be strictly adhered to without any violation, however, allowed the writ petition, permitting the writ petitioner to upload the documents, where she failed to upload the documents in time. It is next contended that if these type of writ petitions are entertained, it will hamper the selection process and it will also open pandora's box. In this regard, the learned Standing Counsel relied upon the decision of the Hon'ble Apex Court in 2019 SCC Online SC 1113 (supra) and also decision of the Full Bench of this Court in W.P.No.10010 of 2015 and 3611 of 2020, dated 18.02.2020.

6. Per contra learned counsel appearing for the respondent-Mr.A.Mohammed Ismail would argue that the writ petitioner has given reasons for her failure to upload the documents in time. The learned Single Judge having found that the writ petitioner is a meritorious candidate has allowed the Writ Petition, therefore interference of this Court is not required. The learned counsel argued in support of findings of the learned Single Judge.

7. We have heard the rival submissions and perused the materials available on record.



8. In the instant case, it is an admitted fact that the appellant issued a notification dated 13.08.2019 inviting applications from eligible candidates for direct recruitment to the post of Assistant Director and Child Development Project Officer. It is not in dispute that the writ petitioner was one among the applicants and she had appeared in the written examinations conducted by the appellant on 16.11.2019. The result was published on 15.10.2020 and the candidates selected were directed to upload their certificates and other documents through e-seva centres from 28.10.2020 to 06.11.2020. Indisputably, the writ petitioner failed to upload the documents within the prescribed time.

9. It is the case of the writ petitioner that the tentative time line for the entire selection process was not strictly followed by the appellant. It is her case that December 2019 was fixed for publication of result, but the results were published only on 15.10.2020. When the appellant did not stick onto time line so as to publish the result in December 2019, she is entitled to seek extension of time. She has also stated that email communication sent to the respondent has fallen in the spam mail and it could not be noticed by her. In the SMS message, the tag "TNPSC" was not used instead, it had tag as "AT-LSTPSC".

10. 2019 SCC Online SC 1113 (supra). In that case, a notification was issued by the Tamil Nadu Public Service Commission inviting applications from eligible candidates for filling up the post of Civil Judges in Tamil Nadu Judicial Service. The Service Commission conducted preliminary examination, written test, interview and published the names of successful candidates. The unsuccessful candidate filed a Writ Petition in the High Court for a direction to declare her result and appoint her as a Civil Judge, since the commission invalidated her written examination in view of violation of instructions to the applicants. The High Court allowed the Writ Petition. The order of High Court was challenged before the Apex Court. In that case, instruction 22 (1) (II) issued by the Commission was found violated by the writ petitioner, as she has underlined some of the portions in the answer sheet in pencil. The Hon'ble Apex Court has held as follows:-

"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



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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 Commission¹.

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 Mohammad*² and *Chandra Singh v. State of Rajasthan*³ 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 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.

11. In W.P.No.10010 of 2015 and 3611 of 2020, dated 18.02.2020 [*Vidya Devarajan and K.Visu Vs. The Secretary, TNPSC*], the unsuccessful candidates in the examination conducted to the post of Civil Judges in Tamil Nadu State Judicial Service sought for answer books and the key answers before the selection process was over. The writ petitioner relied on the decision of the Division Bench in W.P.No.7997 of 2015 and the decision of the Division Bench in W.P.No.1656 of 2014. The subsequent Division Bench doubting the correctness of the decision of the Division Bench directed the matter be placed before the Hon'ble Chief Justice for reference to the Larger Bench. A Larger Bench was constituted and it has been held as follows:-

"24. The instructions to candidates form part of the application for selection to the post of Civil Judge. The instructions are in the nature of rules of selection akin to conditions in a prospectus. The candidates have accepted the conditions and participated in the selection process. The instructions to candidates clearly bar information



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being divulged as regards causes of their failure in their test, that too, before the completion of the selection process. Therefore, the petitioner is estopped from arguing contrary to the instructions. To ensure purity in the oral test and unbiased the evaluation, marks secured by the candidate in the written examination should not be disclosed till the completion of the selection process.

25. Instruction No.24 is a clear bar for the candidates to seek for disclosure of marks and evaluated answer sheet before selection process is completed.

26. In the light of the above, the question referred to us is answered by following the decision in Angesh Kumar (supra) and it is held that the candidates who had participated in the written examination as a part of the recruitment process and who have not been called for viva voce are not entitled to receive the answer sheets and the marks before completion of the entire selection process for such recruitment. Accordingly, W.P.No.10010 of 2015 is closed and W.P.No.3611 of 2020 is directed to be listed before the appropriate Bench. No costs."

12. As rightly pointed out by the learned Standing Counsel appearing for the appellant that the learned Single Judge has also held that the notification is to be strictly adhered to without any violation, however, allowed the Writ Petition observing that nowhere in the notification it is mentioned that in case, the candidates have missed the bus, opportunity would be given to other candidates by way of publication of list-2. It is also held that the writ petitioner was meritorious candidate and she has got to be considered for second chance to upload the documents.

13. It would be useful to extract relevant Clauses in the Notification dated 13.08.2019.

Clause 12 (h):- [General Information]

"Any claim made after the submission of online application will not be entertained. Evidence for all the claims made in the online application should be uploaded / submitted in time when the same are called for. Failure to upload / submit the documents within the stipulated time limit will entail rejection of application."



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Clause 13 (d):- [Communication to applications]

"Individual communication regarding the date and time of certificate verification, oral test and counselling (as applicable) will not be sent to the applicants by post. The details will be made available on the commission's website. Applicants will be informed of the above fact only through SMS and e-mail and they should watch the commission's website in this regard."

Clause 15:- (Upload / Submission of documents)

"Applications 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."

14. It is relevant to point out that in the notification it is clearly stated that Individual communication regarding the date and time of certificate verification, oral test and counselling (as applicable) will not be sent to the applicants by post. The details will be made available on the commission's website. The Applicants will be informed of the above fact only through SMS and e-mail and they should watch the commission's website in this regard. The writ petitioner fairly admits that she received message through SMS, but she has stated that it was not sent in the usual tag, but in a different tag. The result was also uploaded in the Public Service Commission website. So, we find it difficult to accept the reasons given by the writ petitioner.

15. Keeping in view the principles laid down in the above decisions, we are of the considered view that the Writ Appeal is to be allowed and accordingly, the same is allowed by setting aside the order passed by the learned Single Judge in W.P.No.1568 of 2021, dated 09.03.2021. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

r n s



To

The Secretary,
Government of Tamil Nadu,
Social Welfare and Nutritious Meal
Programme Department,
Fort St. George,
Chennai - 600 009.

+lcc to Mr.V.Vaithiyalingam, Advocate, S.R.No.47162

Pre-Delivery Judgment in
W.A.No.1629 of 2021

SRA(CO)
SU(08/10/2021)