



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.No. 2399 of 2021

The Controller of Examination-cum
Secretary Incharge,
Tamil Nadu Public Service Commission,
Poonga Nagar,
Chennai - 600 003.

...Appellant / 2nd Respondent

-vs-

1.C.Geetha

...1st Respondent / Petitioner

2.The Government of Tamil Nadu,
Rep. by the Commissioner cum Secretary,
Archaeology Department,
Fort Saint George,
Chennai - 600 009.

...2nd Respondents / 1st Respondent

Prayer : Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 09.08.2021 passed in W.P.No.20213 of 2020 and allow the Writ Appeal.

Prayer in W.P.No.20213 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the notification of the second respondent dated 16.12.2020 for Original Certificate Verification and Counselling to the post of Archaeological Officer included in Tamil Nadu General Subordinate Service for the year 2019-2020 based on the results of the written examination conducted by the Commission on 29.02.2020 FN & AN and marks and rank published on 30.09.2020 and to quash the same and direct the second respondent to include the Petitioner's Registration NO.010001187 for the Original Certificate Verification and Counselling which is going to be held on 29.12.2020.

For Appellant : Mr.Karthick Rajan

For Respondents : Mr.P.Gunaraj
For M/S. Anantha Vishnu



J U D G M E N T

(Judgment of this Court was delivered by S.VAIDYANATHAN.,J)

The Writ Appeal is filed against the order passed in W.P.No.20213 of 2020 dated 09.08.2021 in allowing the Writ Petition filed by the First Respondent.

2. In this Writ Appeal, the issue revolves around the uploading of consolidated mark sheet / statement of UGC Degree Certificate. The Writ Petitioner, who is the 1st Respondent herein had participated in the selection process for the post of Archaeological Officer in Tamil Nadu General Subordinate Service for the year 2019-2020. The results have been published, in which the 1st Respondent was ranked in Serial No.7 with the Communal Rank No.4. When the Appellant sought for the documents to be uploaded in the Official Website, though she had uploaded all the required documents, her name was not found in the list of candidates published for verification of original certificates. On enquiry, it was stated that she has not uploaded the consolidated Mark Sheet / Statement of UGC Degree Certificate.

3. According to the Appellant, as per the instructions / notifications, it is mandatory on the part of the candidate to upload all the documents, found mentioned in the filled-in application, failing which, the candidate will not be called for further process. It is submitted by the Appellant that all the candidates were duly instructed to ensure that all the certificates are properly uploaded, when they seek the help of e-seva centers and if there is any erroneous uploading of documents. TNPSC will not be held responsible for the lapses. However, learned Single Judge, taking note of the Judgment of this Court in a batch of cases, in W.P.(MD) Nos.19702, 19703 & 19705 of 2020 [D.Ananthy & 2 others V.The Secretary, TNPSC, Chennai & another] dated 07.07.2021, has held that omitting the name of the Writ petitioner in the provisional list of the Selected Candidates to the post of Archeological Officer in the Tamil Nadu General Subordinate Service for the year of 2019-2020, pursuant to the Notification dated 16.12.2020 is illegal and the name of the candidate will have to be considered based on the marks secured by her and the Appellant herein shall take steps to appoint the Writ petitioner within a period of two weeks from the date of receipt of the copy of the said order. Since the condition has not been properly fulfilled by the 1st Respondent, which has not been considered by the learned Single Judge, the order of the learned Single Judge is liable to be set aside.

4. The 1st Respondent / Writ petitioner has contended that she has secured 290.5 marks and stood in Sl.No.7 in the rank



list and was placed at Sl.No.4 in the Communal Rank (BC category) and Sl.No.2 in women reservation. The 1st Respondent herein has applied to the post of Archaeological Officer as per the advertisement and unfortunately, she was not called for the original certificate verification and Counseling, despite the fact that she has uploaded all the original certificates with regard to academic qualification. It is further contended that the Respondent has opted Tamil as one of the languages in the U.G., but cannot upload the same, since there was no column provided in the certificate verification portal for entering the mark statement of the I Year and II Year of the Under Graduate Course. The learned Single Judge has rendered the substantial justice to the 1st Respondent, who is a meritorious candidate and hence the order need not be interfered with.

5. In reply, it is stated by Mr.Karthick, learned counsel appearing for the Appellant that there are several candidates like the 1st Respondent herein, who have not correctly uploaded the documents and whose candidatures have been rejected. He further submitted that if the case of the 1st Respondent is allowed to stand, then it will amount to opening a Pandora box, which will result in other candidates knocking at the doors of this Court with the similar request and hence, the order of the learned Single Judge has got to be interfered with.

6. Heard both parties. Perused the records.

7. It is not in dispute that the Writ Petitioner applied for the post of Archaeological Officer for the year 2019-20 and she stood in Sl.No.7 in overall mark list, Sl.No.2 in women reservation and Sl.No.4 in the BC category. We feel it appropriate to extract the relevant paragraphs in the Notice of Certificate Verification, issued vide Memorandum dated 22.10.2020.

"v) Evidence of qualification in Tamil (Consolidated mark sheet/ Statement of UG degree certificate), as one of the subjects in degree level for having acquired the knowledge in Tamil on or before the date of notification, failing which their applications will be rejected.

vi) Persons claiming preference under PSTM: The candidates, who have claimed to have studied the prescribed educational qualification in Tamil Medium (PG/IPG degree & PG Diploma in Epigraphy and Archaeology (if applicable), in their online application, should produce the evidence in the following format mentioning the medium of instruction as Tamil."



8. From the above, it is apparent that the candidate, who has studied in Tamil medium, has to upload the consolidated mark sheet / statement of UGC Degree Certificate and mere submission in lieu of uploading the documents, is not sufficient, as it will defeat the very purpose of instruction. In the present case on hand, as could be seen from the list of documents, the 1st Respondent has not uploaded the consolidated Mark Sheet / Statement of UGC Degree Certificate, which contain all the subjects, so as to ascertain the medium of study. However, the 1st Respondent, under the erroneous impression, that it is suffice to upload the final mark sheet alone, had uploaded the same which does not reflect the Tamil language as one of the Subjects. Of course, it is an admitted fact that the 1st Respondent has undergone her Under Graduation, by choosing Tamil as the secondary language, but the issue to be decided in this case is as to whether she has uploaded the required certificates in the portal or not so as to enable the TNPSC to scrutinize and proceed further in respect of her certificate verification. Unfortunately on the date of uploading of those documents, by oversight, the 1st Respondent had not uploaded those certificates, due to which, she lost the opportunity of participation in the certificate verification and counselling.

9. Learned counsel for the 1st Respondent has referred to the decision of the Hon'ble Apex Court in the case of UPSC Vs. Gyan Prakash Srivastava reported in 2012 1 SCC 537 to contend that in the aforesaid Judgment, the lawyer, in response to an advertisement issued for the appointment to the post of Legal Advisor, has not enclosed his Law Degree certificate, instead enclosed his Enrollment Certificate issued by the Bar Council of Uthar Pradesh under Section 22(1) of the Advocates Act and therefore, the Application was rejected by the Commission finding that the Petitioner had not enclosed any document to show that he has been awarded a Degree in Law by a recognized University, which is an essential qualification for the post of Legal Advisor. When the matter was taken up to the Tribunal, the Tribunal has allowed the Claim, as against which Commission filed an Appeal before the Apex Court and the Apex Court also dismissed the Appeal filed by the Commission. Learned counsel, by strongly relying upon the said decision, submitted that the rejection, on account of infraction of a condition, must be based on the facts and circumstances of each case and there should not be a mechanical rejection of all applications. Of course, there is every justification on the part of the Commission to reject the candidature, in case the rejection is owing to non-fulfillment of the stipulations, as required in the advertisement. Learned counsel further submitted that in the case referred to supra, it was clearly observed that if an Advocate was allowed to enroll in the Bar Council, it would mean that he had cleared all the papers in Law and therefore, it was



10. In the present case on hand, there is no evidence to show whether the 1st Respondent has studied opted for Tamil as one of the subjects in her Under Graduate Course, since she has not uploaded the required certificates to prove the same. That apart, a reading of the communication from the Commissioner, Department of Archeological, dated 02.08.2021, sent to the Appellant, reveals that the certificate of Post Graduation Diploma in Epigraphy and Archaeology studied in Tamil shall not be issued by the State Archaeology Department, since it is not taught exclusively in Tamil.

11. The yet another decision of Kerala High Court in the case of Kerala Public Service Commission vs. Roshini reported in 2015 SCC Online Ker 23765, relied upon by the learned counsel for the 1st Respondent, to contend that this Court is empowered to render justice, has no relevancy to the facts of this case, as Kerala High Court has rightly held that the rejection of candidature should not be mechanical in nature and it should depend upon the facts of each case. However, in the present case on hand, there is no mechanical rejection of application, as the 1st Respondent had admittedly not uploaded the documents, sought for in the Notification and therefore, the case of the 1st Respondent has to be rejected. Though the learned counsel appearing for the 1st Respondent relied upon yet another judgment of the First Bench of this Court in P.Prabu vs. TNPSC [W.A.No.4318 of 2019] decided on 11.03.2020, the same has been stayed by the Apex Court and therefore, we do not want to discuss the said decision in this Appeal.

12. Learned counsel for the Appellant also relied upon a judgment of the Supreme Court in the case of Karnataka State Seeds Development Corporation Limited Versus H.L.Kaveri and Others reported in (2020) 3 SCC 108. The relevant Paragraph No.18 of the said judgment is extracted hereunder:

"18. We would further like to observe that merely because the first respondent had approached the High Court by filing of a Writ Petition, that would not be sufficient to exercise jurisdiction under Article 226 of the Constitution in overreaching the rights of the candidates who were otherwise eligible for appointment."

13. On a reading of the above paragraph, it is very clear that the case of the 1st Respondent cannot be considered in the absence of the documents that have to be uploaded.



14. In view of the aforesaid facts and circumstances of the case, we are of the view that even though it appears that the 1st Respondent is highly qualified and stood in Serial No.7 in the overall rank list, Serial No.4 in (BC category) and Sl.No.2 in Women Reservation, as per the instructions / notifications, she has not uploaded the Mark Sheet to enable the Appellant to know, whether she has studied Tamil as one of the subjects or the medium of instruction is Tamil to call her for certificate verification. Hence, we find that the order of the learned Single Judge needs to be interfered with. However, from the records, it appears that even though the 1st Respondent is fit to be considered for appointment, unfortunately, the Government is going to lose a good hand on technicalities.

15. In view of what is stated herein above, this Writ Appeal is allowed and the order passed by the learned Single Judge dated 09.08.2021 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

arr/shk

To:

1.The Commissioner-cum-Secretary,
Government of Tamil Nadu,
Archaeology Department,
Fort St. George,
Chennai - 600 009.

2.The Controller of Examinations-
cum-Secretary Incharge,
Tamil Nadu Public Service Commission,
Poonga Nagar, Chennai-3.

+1cc to Mr.P.Gunaraj, Advocate, S.R.No.51034

W.A.No.2399 of 2021

AK-II(CO)
RVM(23/11/2021)