



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.07.2021

CORAM:

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

W.P.No.22227 of 2017

and

WMP.Nos.23258 & 25153 of 2017

T. Shanthi

... Petitioner

/Vs/

1. The Director,
School Education Department,
DPI Campus, College Road,
Nungambakkam,
Chennai - 600 006.

2. The Teachers Recruitment Board,
Rep. by its Member Secretary,
DPI Campus, College Road,
Nungambakkam,
Chennai - 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned letter of non-selection of petitioner for the post of Post Graduate Assistant (Commerce) dated 12.08.2017 issued by the 2nd respondent and quash the same, consequently, direct the respondents to appoint the petitioner as Post Graduate Assistant (Commerce) forthwith.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.K.Tippu Sulthan
Government Advocate

O R D E R

This Writ Petition is filed to call for the records of the impugned letter of non-selection of petitioner for the post of Post Graduate Assistant (Commerce) dated 12.08.2017 issued by the 2nd respondent and quash the same, consequently, direct the respondents to appoint the petitioner as Post Graduate Assistant (Commerce) forthwith.

2. The petitioner herein, had participated in the written examination pursuant to the notification calling for filling up of vacancies of the posts of Post Graduate Assistants (Commerce), Grade-I for the year 2016-2017 as per the advertisement No.3 of 2017.



3. The petitioner admits that she had inadvertently omitted to shade the question paper serial code in the OMR sheet at the time of written examination, which lead to non-evaluation of her OMR sheet and consequently the petitioner's name was not included in the short-listed list of candidates published for certificate verification dated 12.08.2017.

4. The issue as to whether non-shading of the OMR sheet would be fatal in order to deprive the candidate for evaluating her OMR sheet, has come up for consideration before this court in several writ petitions and in one such order of this court in T. Vellisubbaian Vs. Director of Department of School Education and another passed in W.P.(MD)No.2406 of 2015 dated 14.06.2015, it was held that such a defect of non-shading of the OMR sheet is a curable defect, in which, this court has placed reliance on its earlier decisions and held as follows:-

"9.It is also relevant to point out here that non-filling up or non-shading of a column in the OMR answer sheet, which is a curable defect, cannot be a ground for not evaluating the answer sheet as the similar issue has already been decided by this Court in the following judgments:

1. K.Kanimozhi vs. Director of Medical Education [(2011) 7 MLJ 1163].
2. Secretary, Tamil Nadu Public Service Commission vs. M.Chitra [(2010) 2 MLJ 146]
3. V.Premanand vs. The State of Tamil Nadu [AIR 1995 Madras 316]

10.In this case, it is not in dispute that the petitioner has not filled in the application correctly. While applying to take part in the examination, the application was scrutinised and the petitioner was called for to appear for the examination. Only in the OMR answer sheet in column No.3, there was no entry or shading. This cannot be taken as grave mistake to drive out the candidature of the petitioner, if the petitioner is otherwise eligible. ?Err is human? and it is applicable to everyone. The rejection of the candidature is going to be only on account of not shading and not filling up the column No.3, and in case, the petitioner is meritorious, it is a loss to the teaching profession and to the institution as well. There is nothing wrong in evaluating the paper, as the questions in all the serial numbers are similar, but they are placed in different numbers to avoid copying etc. If the petitioner is not meritorious, the candidature of the petitioner can be rejected. In case, the petitioner is successful, the respondent shall consider the case of the petitioner to accommodate him. Since the



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respondents have stated that the recruitment process is over and that all the teachers have joined, even though non-filling or not shading the column No.3, cannot be treated as a serious error. If this Court gives a blanket direction accepting the contention of the petitioner, it will unsettle the teachers who have already joined and this may create a bad precedent and cause disturbance to the teachers who have already joined. Even though there is an error in not filing up or shading the column No.3, this Court directs the respondent concerned to evaluate the OMR answer sheet of the petitioner and if he is successful, his case may be considered for accommodating him in the ensuing vacancy in preference to the other candidates who are likely to be selected and appointed."

5. The case of T. Vellisubbaian Vs. Director of Department of School Education and another, (cited supra) was confirmed on appeal by the Hon'ble Division Bench in W.A.(MD) No.909 of 2015 and the further appeal before the Hon'ble Supreme Court in SLP. (C) No(s). 26862 of 2016 was dismissed on 21.01.2019. Thus it has been established that, non-shading of the serial code in the OMR sheet, is a curable defect and hence the petitioner's candidature cannot be rejected on this minor ground.

6. In the result, there shall be a direction to the second respondent herein to include the name of the petitioner in the selection list for the post of Post Graduate Assistant (Commerce), published pursuant to the recruitment notification in Advertisement No.3 of 2017 for the year 2016-2017 and forward such selection list to the first respondent for the purpose of issuance of the necessary appointment order. The second respondent herein shall endeavour to include the petitioner's name in the selection list, atleast within a period of two weeks from the date of receipt of a copy of this order. The writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Director,
School Education Department,
DPI Campus, College Road,
Nungambakkam, Chennai - 600 006.



2. The Teachers Recruitment Board,
Rep. by its Member Secretary,
DPI Campus, College Road,
Nungambakkam,
Chennai - 600 006.

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+1cc to Mr.M.R.Jothimanian, Advocate, S.R.No.34611
+1cc to the Government Pleader, S.R.No. 34957

W.P.No.22227 of 2017
and
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VG II(CO)
GN(18/08/2021)