



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2021

CORAM:

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.990 of 2021
and W.M.P.(MD).No.857 of 2021

S.Sabitha Banu

...Petitioner

Vs.

1.Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Park Town, VOC Nagar,
Chennai - 600 003.

2.The Director of Animal Husbandry and
Veterinary Services,
O/o. the Directorate of Animal Husbandry
and Veterinary Services,
Ann Salai, Nandanam, Chennai - 35.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent No.1 to consider the candidature of the petitioner for interview and consequential appointment to the post of Veterinary Assistant Surgeon as per 2019-2020 recruitment of the Notification No.32/2019, dated 18.11.2019, within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Rajasimman for
M/s.T.Lajapathi Roy.

For Respondents : Mr.K.K.Senthil for R1
Standing Counsel
Mr.S.Dayalan for R2
Government Advocate

O R D E R

Heard Mr.T.Aswin Rajasimman, learned counsel for the petitioner, Mr.K.K.Senthil, learned Standing counsel appearing for the first respondent and Mr.S.Dayalan, learned Government Advocate appearing for the second respondent.

2.The petitioner herein is an aspirant for qualifying herself to the post of Veterinary Assistant Surgeon. The first respondent had called for applications to fill up the posts of Veterinary



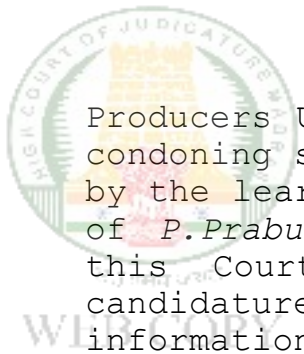
Assistant Surgeon in the Tamil Nadu Animal Husbandry and Veterinary Services, for the year 2019-2020. Accordingly, the petitioner had made an application on 30.11.2019, through online mode and among the various columns in the application, she had entered her employment status as 'unemployed', which according to the petitioner, was an inadvertent mistake, since she was already appointed as a Veterinary Doctor in Madurai District Co-operative Milk Producers Union on contract basis, which position is still continuing. The petitioner's candidature was not considered by the first respondent on the ground that she had failed to furnish the information that she was temporarily employed on contract basis.

3.Mr.Aswin Rajasimman, learned counsel appearing for the petitioner would submit that though the petitioner had inadvertently entered her employment status as unemployed, she had thereafter, uploaded a No Objection Certificate issued by the General Manager of Madurai District Co-operative Milk Producers Union Limited and therefore, she had no intention of suppressing or giving false information to the first respondent. He would further rely on two Division Bench Judgments of this Court in the case of ***The Secretary, TNPSC Vs. A.Suthanthiramoorthy*** passed in ***W.A.No.3285 of 2019*** and in the case of ***M.Silambarasan Vs. The Secretary, TNPSC and another*** passed in ***W.A.No.424 of 2018***. The learned counsel made an earnest request that such an inadvertent mistake should be condoned, particularly, when the petitioner had subsequently uploaded the No Objection Certificate from his employer, which evidences that she was in fact an employee.

4.Mr.K.K.Senthil, learned Standing counsel appearing for the first respondent would submit that the issue of committing inadvertent mistakes has already came up before a Hon'ble Division Bench of this Court in the case of ***P.Prabu Vs. The Secretary, TNPSC*** passed in ***W.A.No.4318 of 2019, etc.***, and the Hon'ble Division Bench has held that such inadvertent mistakes cannot be condoned. He further submits that on the proposition, a Hon'ble Division Bench of this Court in ***E.Tamizhannai Vs. The Secretary, TNPSC and another*** passed in ***W.P.No.14635 of 2020***, had reiterated the same proposition.

5.I have given careful consideration to the submissions made by the respective counsels.

6.It is rather unfortunate that the candidature of the petitioner came to be rejected on the ground of mistake of giving false information, when evidently, the mistake seems to be inadvertent. I am constrained to make such a statement in view of the fact that though the petitioner had shown her employment status as 'unemployed' in her online application, she had subsequently uploaded a 'No Objection Certificate' from her employer on 30.10.2020. Effectively, she had brought to the notice of the TNPSC that she was employed with Madurai District Co-operative Milk



Producers Union Limited. However, I am constrained to refrain from condoning such an inadvertent mistake, in view of the decision cited by the learned Standing Counsel for the first respondent in the case of *P.Prabu* (cited supra), wherein, the Hon'ble Division Bench of this Court had ratified the TNPSC's decision to reject the candidature of an applicant on the ground of furnishing wrong information, even though it was an inadvertent mistake. The relevant portion of the order reads thus:

"13. The candidates have against the column "Are you a Government Employee" have answered "No". No doubt, they have also furnished the request seeking no objection certificate from the employer and have also furnished no objection granted to them. It is also not disputed that they do not stand to gain by giving a wrong particular. It also cannot be said that by giving such a wrong particulars, they would cause prejudice either to the Commission or to any other candidate. It is also correct that they will not derive any advantage by giving the wrong answer. In spite of all these, the short issue is that can the Commission take a liberal view by condoning this action, and consequently, whether the High Courts, while exercising discretion under Article 226 of the Constitution of India, can give a mandamus to the Commission to ignore the mistake in on-line form.

14. Paragraph 19 of the Commission's instructions to the applicants which deals with disqualification/debarment as which is given in para 7 of the counter affidavit filed before the learned Single Judge reads as under:-

The following acts will end in disqualification or debarment:

"XXXXXXXXXXXXXXXXXXXXX

(b) (ii) Suppression of material information regarding
(a) Previous appearances or availing free chances, employment in Government or Local Bodies, Public Corporations, etc.

And that the applicant responsible for such act will be debarred from appearing for the examination and selection held by this Commission permanently or for such period of year as the Commission may decide and hence he was not allowed for Oral Test. Necessary action is being taken separately for issuing show-cause notice to the candidate.

15. Similarly, in paragraph 13 (g) of the Commissioner's Notification No.15/2018 dated 10/8/2018, read as under:-



"para 13 (g) if any of their claims is found to be incorrect, it will lead to rejection of their candidature and suitable penal action including debarment."

16. Counter also states that the appellants have also given a following declaration in their applications, which reads as under:-

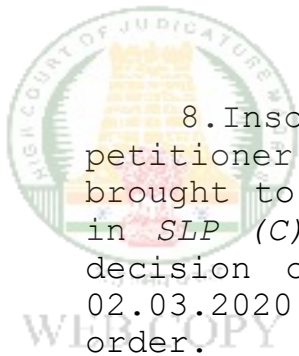
"I hereby declare that all the particulars furnished in this application are true, correct and complete to the best of my knowledge and belief. In the event of any information being found false or incorrect or ineligibility being detected before or after the examination or at any stage, any action can be taken against me by the TNPSC including rejection of my application. I have gone through the instructions to the candidates and Commission's Notification for this recruitment before filling up the application form."

17. The appellants/writ petitioners are not illiterate candidates.

The consequences of the mistake even if inadvertent was known to them. No power has been shown to us by which the Commission can relax any of the conditions or relax consequences which will follow from giving a wrong information. No mistake can be found with the Commission for rejecting the candidature of the appellants on the ground of furnishing wrong information."

7. On the same proposition, the decision in the case of *E. Tamizhannai* (Cited supra) of the Hon'ble Division Bench of this Court reads thus:

"4. The petitioner cannot seek refuge under the garb of any human error or inadvertent error inasmuch as the petitioner is a candidate for a prestigious examination concerning the judiciary where she should be presumed to have filled up her form consciously and to the best of her knowledge on the basis of the qualification possessed by her. To permit any alternation or change or permit the said arrangement sought by the petitioner would be to deny any such opportunity to a large number of such candidates who might have committed the same error or would like to have the same benefit which would be violating not only the terms and conditions of the advertisement and the application form, but also Articles 14 and 16 of the Constitution of India. The notification, therefore, issued for holding of the examinations containing the correct particulars in application form is a sine qua non and the same admittedly having been faulted by the petitioner, no course is open to her at this stage may be possible."

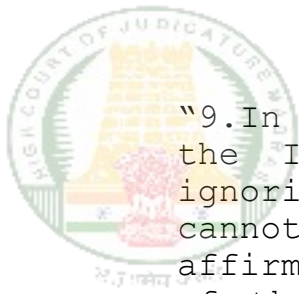


8. Insofar as the decision relied by the learned Counsel for the petitioner in *A.Suthanthiramoorthy's* case is concerned, it is brought to the notice of this Court that the said case was appealed in SLP (C) 4357 of 2020 before the Hon'ble Supreme Court and the decision of the Hon'ble Division Bench has also been stayed on 02.03.2020. As such, I am unable to make any reference to the said order.

9. The learned counsel for the petitioner also placed reliance in the case of *M.Silambarasan*, (Cited supra) wherein, a Hon'ble Division Bench of this Court had liberally interpreted a similar clause and directed the TNPSC to issue an appointment order. The facts in *M.Silambarasan's* case may not be directly applicable to the case in hand. In *M.Silambarasan's* case, the applicant therein had originally claimed preferences under PSTM quota and in view of his inability to produce the requisite certificate in time, he had subsequently made a request to treat him under General Category, stating that, his original claim under PSTM quota was an inadvertent mistake. It is in this background, the Hon'ble Division Bench had come to the conclusion that the petitioner could be extended with a sympathetic view, by considering that such a lapse would dis-entitle the petitioner to be considered in other categories, for which, he is otherwise entitled and in this background, the order came to be passed. On an over all reading of the decision, it is also seen that the order of the Hon'ble Division Bench has been passed on the particular set of facts related to the applicant therein and therefore, could be considered as an *order in persona* rather than an *order in rem*. Though this court empathises on the mistake committed by the petitioner, I am rendered helpless in view of the limited scope under Article 226 of the Constitution of India, to interfere into such inadvertence, particularly, in the light of the decisions rendered by the Hon'ble Division Bench in the cases of *P.Prabu* and *E.Tamizhannai* referred Supra. Further, any indulgence by condoning the mistake of the petitioner would also amount to modifying or relaxing the instructions issued by the TNPSC to the candidates, which is impermissible.

10. The scope of Article 226 of the Constitution of India in such matters, was dealt with by the Hon'ble Supreme Court in ***The State of Tamil Nadu and others Vs. G.Hemalatha and another*** made in ***Civil Appeal No.6669 of 2019*** in the following manner.

"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."



"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 teeth of the Instructions which are binding on the candidates taking the examinations."

11.The aforesaid extract is self-explanatory. As such, the grounds raised by the petitioner may not be sufficient to invoke the extraordinary powers under Article 226 of the Constitution of India and condone the lapse.

12.In the light of the above discussions, I do not find any merits in the present writ petition. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Director of Animal Husbandry and Veterinary Services,
O/o. the Directorate of Animal Husbandry and Veterinary Services,
Ann Salai, Nandanam, Chennai - 35.

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-2549[F] dated 01/02/2021)

+1 CC to M/s.GP (SR-2622[F] dated 01/02/2021)

+1CC to M/s.T.LAJAPATHI ROY,Advocate (SR-2922[F] dated 02/02/2021)

W.P.(MD) No.990 of 2021
29.01.2021

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