



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD)No.489 of 2021
and C.M.P. (MD) No.2068 of 2020

S.Sabitha Banu ... Appellant/Petitioner
Vs.

- 1.Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Park Town, VOC Nager,
Chennai - 600 003.
 - 2.The Director of Animal Husbandry and Veterinary Services,
O/o. The Directorate of Animal Husbandry and Veterinary Services,
Anna Salai, Nandanam,
Chennai - 35.
- ... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.990 of 2021, dated 29.01.2021.

Prayer in WP(MD). 990 of 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a 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 dt 18.11.2019 within the time period stipulated by this Hon'ble Court and pass any further or other orders as this Hon'ble Court may deem fit under the circumstances of the case and thus render justice.

For Appellants : Mr.S.Rajasekar
For Respondent No.1 : Mr.K.K.Senthil
For Respondent No.2 : Mr.K.P.Krishnadoss
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The present appeal has been preferred by the appellant, who is one among the candidate, who applied for Veterinary Assistant Surgeon in Tamil Nadu Animal Husbandry and Veterinary Service. She is a lady belonging to the minority community, entitled to be considered under BC Muslim Community under the 200 point roster.



She was provisionally appointed to the aforesaid post pursuant to the publication made by the respondent Commission in their official website on 19.10.2020. During the certificate verification, she has produced copy of the employer's certificate to the effect that she was working on temporary basis with the Aaavin, which is a statutory Corporation wholly run by the Government of Tamil Nadu. Unfortunately, in the application filed, she filled it up as an un-employed. There are only two categories viz., 'employed' and 'un-employed'. As she violated the Commission's notification No.32/2019 dated 18.11.2019, and the instruction No.19(b)(ii), her candidature was rejected. Learned Single Judge dismissed the Writ Petition filed by the appellant and hence, the Writ Appeal.

2.Learned counsel appearing for the appellant submitted that there is no undue advantage to the appellant. She was working on a temporary basis. The application merely states as 'employed' or 'un-employed'. She misconstrued it as permanent employment. In any case, she produced 'No objection' certificate from the employer at the time of certificate verification. It is only in voluntary and not suppression. Even assuming it as suppression, it is not material suppression. If it is a suppression, she would not have produced the 'No objection' certificate at the time of certificate verification along with other documents. In such a case, her case cannot be rejected. Reliance has been made on the decision of the Hon'ble Apex Court in **Avtar Singh v. Union of India [(2016) 8 SCC 471]** and it has been relied upon by the Division Bench of Delhi High Court in **Ajay Kumar Mishra v. Union of India [(2016) SCC OnLine Del 6553]**.

3.Learned Standing Counsel appearing for respondent No.1/Tamil Nadu Public Service Commission by placing reliance on the order of the Division Bench of this Court in **Writ Appeal No.4318 of 2019 dated 11.03.2020** submitted that in as much as there is violation of the Commission's notification and instructions, learned Single Judge has rightly dismissed the Writ Petition filed. Reliance has also been made on the judgment of the Hon'ble Apex Court in the **State of Tamil Nadu & Ors. v. G.Hemalatha & anr in Civil Appeal No.6669 of 2019**, which reversed the order of the Division Bench of this Court.

4.Before considering the submissions made, we may place on record the relevant paragraph of the notification, dated 18.11.2019:-

"12.(I) Incomplete applications and applications containing wrong claims or incorrect particulars relating to category of reservation / eligibility / age / communal category / educational qualification / medium of



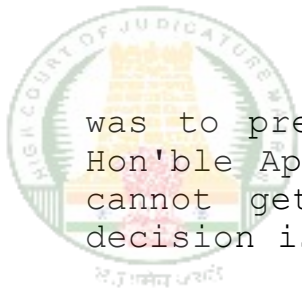
instruction / physical qualification / other basic qualifications and other basic eligibility criteria will be liable for rejection.

...

13. (h) If any of their claim is found to be incorrect, it will lead to rejection of their candidature and suitable panel action including debarment."

Of the aforesaid clauses what is applicable is only 13.(h). Even under 13.(h) the appellant would not come. Appellant's act cannot be claimed as incorrect. It is only a wrong understanding. While filling the application she has stated as un-employed. Admittedly, she was employed as a temporary employee of the Aavin. Whether such temporary employment is employment or not is also a factor to be considered because no right is accrued as the payment is made on a daily wages basis and she can be removed from service any time. Only on that understanding, she has stated as un-employed. No particular has been sought for with regard to the question of employment, whether permanent or temporary. In that case, she would have clearly said that she is working on temporary basis. The fact that subsequently she produced a 'No objection' certificate from the employer, though working on temporary basis, shows that she was innocent of what she said. Other relevant instruction is instruction No.19(b)(ii). Much reliance has been made on the aforesaid provision. Suppression of fact involving employment in Government or local Body is different. In our considered view, this clause will not apply to the case of the appellant. We have already seen that she has worked on temporary basis. We could see a temporary employment cannot be equated to the status of permanent employment. Added to that, she does not have any added advantage by making such suppression. At best, this case could come within the purview of inadvertence and not material suppression. This we may hold so, in the event of a possible view being available that clause 19(b)(ii) would include a temporary employment also. We may also note that had not the appellant brought to the notice of respondent No.1 about her employment on temporary basis by production of 'no objection' certificate from the employer, the present situation would not arise.

4. Much reliance has been made on the judgment of the Division Bench of this Court in **W.A.No.4318 of 2019 dated 11.03.2020 (P.Prabu v. Tamil Nadu Public Service Commission)**. In the said case, the candidate was working as a permanent employee, which is not the case before us. In such view of the matter, the law laid down cannot be applied to the facts of the case. In Civil Appeal No.6669 of 2019, the Hon'ble Apex Court was dealing with a candidate, who wrote the examination for the Civil Judge, contrary to the instruction made marking in pencil. There is an object behind the instruction marking with pencil against the instruction, which



was to prevent any malpractice. In such view of the matter, the Hon'ble Apex Court held that the candidate having committed wrong cannot get over the same. We are of the view, the aforesaid decision is also factually distinguishable.

5. There is one difficulty in granting the relief to the petitioner. Now there is no post, except the fourteen posts, which are directed to be kept vacant, pursuant to the orders of this Court in the Writ Petitions filed by third parties. In the State of Tamil Nadu, we are following 200 point roster. In the event of any of the writ petitions being dismissed and the appellant being entitled to be considered under the said category, the respondent shall consider the appellant's case.

6. Accordingly, the Writ Appeal stands allowed in the aforesaid terms by setting aside the order of the learned Single Judge in W.P.(MD)No.990 of 2021, dated 29.01.2021. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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

1. The Secretary,
Tamil Nadu Public Service Commission,
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,
Anna Salai, Nandanam,
Chennai - 35.



+1 CC to M/s.SPL GP (SR-14097[F] dated 29/03/2021)

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-14149[F] dated 29/03/2021)

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+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-14136[F] dated 29/03/2021)

W.A. (MD) No. 489 of 2021
26.03.2021

SSS (CO)

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