



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	01.04.2021
Pronounced on	07.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.3998 of 2020

and

W.M.P. (MD) Nos.3393 & 3397 of 2020

S.Barathi

...Petitioner

Vs.

1.The Chairman

The Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar,
Chennai.

2.The Secretary,

The Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar,
Chennai.

3.The Controller of Examinations,

The Tamil Nadu Public Service Commission,
Frazer Brige Road,
V.O.C.Nagar, Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issued a Writ of Mandamus, directing the respondents to include the petitioner's name in the eligible list of candidates for counseling and to permit her to participate in the counseling in Group IV-Combined Civil Services Examinations.

For Petitioner : Mr.B.S.Meltiue

For Respondents : Mr.Isaac Mohanlal, Sr. Counsel
for Mr.D.Sivaraman
Standing counsel for TNPSC

O R D E R

The petitioner herein had submitted On-line application to the Tamil Nadu Public Service Commission (TNPSC), pursuant to the recruitment Notification No.19 of 2019 dated 14.06.2019 for the posts in Group-IV Services. The petitioner had taken part in the written examination. After publication of the results and based on the claim made in her On-line application, she was called upon to



upload the documents between 05.12.2019 and 18.12.2019 to substantiate her claim made in the On-line application.

2. It is stated that the petitioner's name was not included in the selection list since she had not uploaded her 'Persons Studied in Tamil Medium' (PSTM) Certificate and 'Destitute Widow' (DW) Certificate evidences her total monthly income is Rs.5,500/-, whereas Section 26(2) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 restricts the monthly income of the destitute widow at Rs.4,000/-. Aggrieved over the same, the petitioner has come forward with the present Writ Petition.

3. Heard the learned counsel for the parties.

4. It is not in dispute that even if the petitioner had not been brought under the PSTM category, she would have qualified herself in the open category. The petitioner also claims that she had not sought for reservation under the PSTM category. In identical cases, this Court had dealt with the decision of the TNPSC in treating similarly placed candidates under PSTM category, only on the presumption that they had claimed reservation by referring to their medium of instructions as Tamil and this Court had allowed the Writ Petitions filed in ***W.P.No.5812 of 2020 [M.Nisha V. The Secretary, TNPSC, Chennai and Another]*** & batch dated 07.07.2021. The relevant portion of the order reads as follows:

" 8. It is the case of all the petitioners herein that they had not claimed any special reservation under PSTM category and even without applying the reservation under PSTM category, they have qualified themselves in the open category for selection to the posts. This aspect has not been disputed by the learned Senior counsel appearing for the TNPSC.

9. The respondents are unable to substantiate as to on what basis, they had come to the conclusion that all these petitioners had claimed reservation under PSTM category. Merely because the On-line application provides for a column, calling upon the applicants to mention their medium of instructions, it cannot be construed as if these applicants had claimed reservation under the PSTM category. It is reiterated that there is no column in the application, calling upon the candidates to exercise their option to claim reservation under PSTM category.

10. In all recruitment processes held by the Government or other Governmental bodies and where the rule of reservation is made applicable, irrespective of whether it is horizontal or vertical reservation,



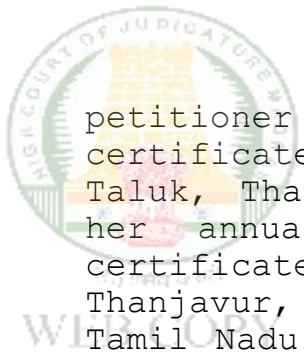
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the recruiting authority cannot subject the candidates to the rule of reservation, just because they qualify themselves for such reservations. The method of recruitment adopted by the recruitment authorities ratifies this proposition, since the first stage of evaluating the On-line applications is on the merits in the open category for all the applicants universally and irrespective of whether they had qualified themselves for any horizontal or vertical reservation, their candidature was short listed in the open category on merits. For instance, a candidate may belong to Most Backward Caste or Scheduled Caste or Scheduled Tribe community and when he/she qualifies themselves in the open category, their candidature cannot be considered under the communal reservation. It is needless to point out the right for employment is a fundamental right as guaranteed under the Constitution of India and depriving such an opportunity would also be violative of Article 14 of the Constitution of India. This proposition has been reiterated by the Hon'ble Supreme Court in the case of **Ritesh R. Sah Vs. Dr.Y.L.Yamul & Others** reported in **1996 (3) SCC 253**.

11. In the instant case, when the petitioners have qualified themselves in the open category itself, there was no justification on the part of the TNPSC to treat them as candidates claiming reservation under PSTM category and insisting for production of a PSTM Certificate. Hence, the proper course that ought to have been adopted by TNPSC is to straight away to include the names of the candidates who had qualified themselves in the open merit category and ought not to have resorted to demand supporting testimonials for any kind of reservation which the candidates may or may not claim. In these circumstances, the reason assigned the reason assigned by the TNPSC for rejection of the petitioners' candidature is unjust and illegal."

5. Since the petitioner herein, is similarly placed as that of the candidates in the aforesaid Writ Petitions, the reason for rejection of her candidature on the ground that she has not uploaded the PSTM Certificate, cannot be sustained.

6. Insofar as the uploading of the destitute widow certificate dated 06.07.2019, evidencing the petitioner's monthly income at Rs.5,500/- is concerned, it is seen that this certificate was issued by the Revenue Divisional Officer of Thanjavur. Further, the



petitioner herein also produced the authentic copy of the income certificate issued to her by the Zonal Deputy Tahsildar, Budalur Taluk, Thanjavur District, dated 06.12.2019, which evidences that her annual income is Rs.48,000/-. Apparently, the income certificate dated 06.12.2019 issued by the Zonal Deputy Tahsildar, Thanjavur, satisfies the requirement under Section 26(2) of the Tamil Nadu Government Servants (Conditions of Service) Act. Thus, when the petitioner possesses the income requirement to treat her as a 'destitute widow', by producing appropriate certificate from the Zonal Deputy Tahsildar, Thanjavur, the respondent may not be justified in rejecting her candidature on this ground and not qualifying her as a destitute widow.

7. The Hon'ble Supreme Court in the case of **Charles K. Skaria & Others V. Dr.C.Mathew & Others** reported in **1980 (2) SCC 752 at paragraph 23**, had held that a method of convenience for proving possession of a qualification is merely directory. The Hon'ble Supreme Court had in that case, ratified the decision of the Selection Committee in giving credit for the diplomas of the candidates, although the authentic copies of the diplomas were not attached to the application for admission.

8. This proposition was again reiterated by the Hon'ble Supreme Court in the Appeal (Civil) No.6506 of 2004 dated 05.10.2004 arising in the case of **Dolly Chhanda Vs. The Chairman, JEE & Others**. By applying this ratio for the present case in hand, it could be said that when all other documents were uploaded by the candidate, non uploading of her required income certificate to substantiate her under destitute widow category in the application may not be fatal.

9. Furthermore, the commission of this mistake can be treated as a minor mistake. A learned Single Judge of this Court had an occasion to deal with a similar minor error made by a candidate and had invoked the powers under Article 226 of the Constitution of India in the case of **M.Abiramadevi Vs. The Secretary, TNPSC, Chennai & another in W.P.No.4700 of 2020** and passed orders in favour of the candidate therein. The relevant portion of the order reads as follows:-

"10. In view of the above positive development, this Court is not inclined to go into the contentious position adopted by the respondent Commission. No doubt, the Commission is under legal obligation to insist on the compliance of all candidates to every requirement which was part of the notification. Nevertheless, in the case of this nature, when extremely minor error has been committed inadvertently by the candidate concerned, the same cannot be allowed to deprive the candidate of her valuable right to gain employment in Public Service. After all, the saying is "To err is human" and such



inadvertent mistake committed by the candidate viz., the petitioner, cannot be visited with a punishment of being denied of a life time opportunity of gaining employment in Public Service. In this case, the petitioner, having been provisionally selected for appointment and if this Court were to accept the objections of the Commission, in the face of the positive development, it would only result in grave injustice to the petitioner, as she has rightly earned her place for provisional appointment on the basis of her performance and hard work."

10. By taking into account the ratio held by the Hon'ble Supreme Court in the cases of *Charles K. Skaria (supra)* and *Dolly Chhanda (supra)*, as well as the decision of this Court in *Abiramadevi's case (supra)*, the failure on the part of the petitioner to upload the required income certificate to treat her under the Destitute Widow category, should not deprive her of the selection. Consequently, the impugned order of rejection requires to be interfered with and thereby facilitate the candidature of the petitioner to be included in the selection list. Likewise, non uploading of the PSTM Certificate also, will not be fatal in view of the earlier discussions in this order.

11. In the result, the above Writ Petition stands allowed. Consequently, the action of the TNPSC in rejecting the petitioner's candidature on the ground that she had not uploaded the PSTM Certificate and the required Certificate to treat her under Destitute Widow Category relied upon by them in her On-line application, is declared as illegal. As a result, there shall be a direction to the TNPSC to include the name of the petitioner herein in the selection list for counseling to the posts included in Group-IV Services, as per Notification No.19 of 2019 dated 14.06.2019. The TNPSC shall endeavor to include the name of the petitioner herein, atleast, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

Sd/-

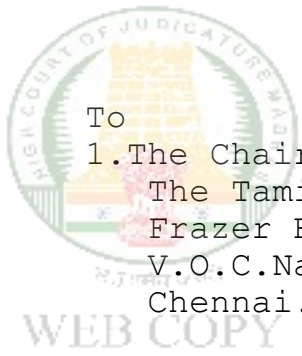
Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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