



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2021

CORAM :

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THE HON`BLE MR.JUSTICE B.PUGALENDHI

W.P(MD) No.20028 of 2021

R.Sadam Husshine

...Petitioner

Vs.

1.Tamilnadu Public Service Commission,
Through its Secretary,
TNPSC Road,
VOC Nagar,
Park Town,
Chennai - 600 003.

2.Tamilnadu Arasu Cable TV Corporation Ltd,
Through its Managing Director,
Dugar Towers,
34(123) 6th Floor,
Marshalls Road,
Egmore,
Chennai - 600 008.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to relax and extend the time limit for certificate verification in respect of the post of Assistant Director (Technical) in the Department of Industries and Commerce Tamilnadu as per 22.09.2021 notification/press release of the TNPSC in its website in respect of the petitioner and permit all other acts necessary to enable the petitioner to submit documents for certificate verification, within the time stipulated by this Court.

For Petitioner	:Mr.H.Lakshmi Shankar
For Respondent R1	:Mr.J.Anand Kumar

O R D E R

The writ petition is filed for a Mandamus, directing the first respondent to extend the time limit for certificate verification, in respect of the post of Assistant Director (Technical) in the Department of Industries and Commerce, Tamilnadu, as per notification/press release of the TNPSC, dated 22.09.2021.



2.The case of the petitioner is that he is a B.Tech graduate. He studied at Amrita Vishwa Vidhyapetham University, Coimbatore and passed the degree with distinction in the year 2014. He applied for the post of Assistant Director of Industries and Commerce (Technical), on 09.12.2019, as per the recruitment notification No.34/2019 issued by the first respondent/TNPSC issued. As per the said notification, the tentative time line for recruitment process is as under:-

Sl.No	Process	Timeline
1.	Written Examination	25.04.2020 & 26.04.2020
2.	Publication of results	May 2020
3.	Certificate upload for CV	June 2020
4.	Certificate verification	June 2020
5.	Date of oral test	July 2020
6.	Final selection list	July 2020

As scheduled, the recruitment process could not be adhered as per the time line fixed by the TNPSC by themselves, and the reason stated by the TNPSC is COVID-19 pandemic situation. On 09.01.2021, written examination was conducted and on 22.09.2021 only, press release was issued by TNPSC vide advertisement number 46 of 2021, which declared the result and the date for certificate verification to be between 04.10.2021 to 12.10.2021, till 5.30 pm. According to the petitioner, this press release/result was published only in the TNPSC website and they have not communicated the result to the petitioner.

2.1.The learned counsel for the petitioner submits that from 04.10.2021 to 12.10.2021, online certificate verification was conducted by TNPSC for candidates, who cleared the written examination. But, the petitioner did not receive any email or SMS, informing about the process of certificate verification in advance. i.e, no email or SMS was received by the petitioner, before 04.10.2021 informing this process of certificate verification. The learned counsel for the petitioner has relied on paragraph 13 (d) of notification, dated 09.12.2019, which reads as under:-

"COMMUNICATION TO APPLICANTS:

Individual communication regarding the date and time of certificate verification, oral test and counselling (as applicable) will not be sent to the applicants by post. The details will be made available on the Commission's website. Applicants will be informed of



the above fact only through SMS and e-mail and they should watch the Commission's website in this regard"

2.2.The learned counsel further submits that the notification of the TNPSC being mandatory and having force of law ought to be strictly complied with by TNPSC also. But, TNPSC did not adhere to the timeliness stipulated in the notification for recruitment process, citing COVID-19 pandemic. So, it can be easily inferred that the timeline in the notification is not mandatory in such strict sense and circumstances can very well be taken into account, to relax it. TNPSC is bound to send communications to the applicants by e-mail and SMS, apart from hosting the information in the website. All the three modes are obligatory and the TNPSC cannot fail to adhere to these modes of communication notified. The hosting of the information in the website without sending e-mail and SMS will not fulfil the requirement as per clause 13(d) of the notification. Failure to do so will clearly be an infraction by the TNPSC of the mandatory procedure. In the present case, TNPSC has not sent e-mail. The SMS was received by the petitioner on 12.10.2021 around 12.03 pm and this is last date for uploading certificates by approaching e-seva centre. No e-mail or SMS communication was served upon the petitioner before the commencement of the certificate verification process, from the TNPSC and TNPSC has violated the mandatory instructions/procedure notified by them. It is a settled principle of law that a party, who is at the fault cannot take advantage of his own fault.

2.3.Therefore, according to the learned counsel for the petitioner, the petitioner must be provided an opportunity to submit the original certificates, by extending time as stipulated in the notification.

3.Mr.J.Anand Kumar, learned counsel appearing for the respondent submits that the candidates, who have applied as per the notification are bound by the notification and they are agreed to the terms and conditions of the notification, by way of declaration given in the online application, before participating in the written examination. Having agreed for the terms and conditions, the petitioner cannot challenge the terms and conditions prescribed in the notification at any point of time. The learned counsel for the respondent has also relied upon the notification, dated 09.12.2019, and the relevant clauses are as follows:

"PARA 12(H)

Any claim made after the submission of online application will not be entertained. Evidence for all the claims made in the online application should be uploaded /submitted in time when the same are called for. Failure to upload/submit the documents within the stipulated time limit will entail rejection of application.



PARA 13(d)

Individual communication regarding the date and time of Certificate verification, oral test and counselling (as applicable) will not be sent to the applicant by post. The details will be made available on the Commission's website. Applicants will be informed of the above fact only through SMS and e-mail and they should watch the Commission's website in this regard.

PARA 15

Applicants should upload/submit the required documents for proof in respect of all the claims made in the application with reference to this notification as and when called for. If the required certificates are not uploaded or submitted by the applicants, within the stipulated time, their applications will be rejected."

3.1.The learned counsel appearing for the respondent brought to the notice of this Court that the petitioner has given the following declaration in the online application for the above said recruitment:-

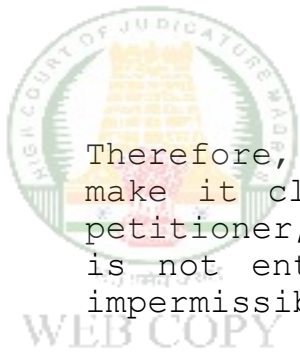
"16.I am fully aware that no individual communication regarding the date and time of oral test, certificate verification and counselling (wherever applicable) will be sent to me. I am also aware that the schedule of oral test/counselling/certificate verification will be made available on the Commission's website and I have to know the above details on receipt of e-mail/press release/SMS alers from the Commission to this effect."

Therefore, according to the learned counsel for the respondent, it is the responsibility of the petitioner to check his e-mail/ Press release/SMS alerts from the Commission periodically. The conditions imposed in the memorandum No.4187/APD-B1/2019, dated 23.09.2019, clause (iv) of para .3 and Notes appended to very same memorandum are as follows:-

"..iv.If he/she fails to upload any one or more of the documents/certificates within the stipulated time limit for onscreen certificate verification, he/she will not be considered further stage of selection process and his/her candidature will be rejected without any further notice"

"..5. Candidates who have been admitted provisionally to the Onscreen certificate verifi'are hereby advised to upload the scanned copy of all relevant documents without fail. Failure to upload even any one of the essential documents within the time limit stipulated above will result in his/her non-admission to the next stage of selection and rejection of his/her online

<https://hcservices.ecourts.gov.in/hcservices>



Therefore, according to him, cumulative reading of all conditions make it clear that these conditions are mandatory. Therefore, the petitioner, who accepted and participated in the selection process is not entitled to seek relaxation of conditions now, which is impermissible in law.

3.2.He further submits that based on the above instruction to applicant, e-mail has been sent on 27.09.2021 and SMS also sent on 27.09.2021, 29.09.2021 and 12.10.2021. Since the petitioner failed to upload the certificates in time, he was not considered for further selection process with respect to Paragraph 15 of the notification.

4.The learned counsel for the petitioner disputed the same, stating that the petitioner has not received email as claimed by the respondent and SMS was also received by him, only last minute i.e on 12.10.2021, which is the last date for uploading of certificates. He was not having sufficient time, since he is working in Hyderabad, as he could not immediately get leave from his employer, to approach the respondent immediately, to furnish the certificates for verification and therefore, he has made request to his parents to upload the certificates through e-seva centre. The parents of the petitioner also approached the e-seva centre, Dindigul. The person, who was incharge of e-seva centre at Dindigul, refused to upload the certificates, in the absence of candidate/the petitioner herein, and therefore, they went to E-seva centre located at Madurai and attempted to upload the certificates. But, in the meantime, time lapsed and they could not effectively upload the certificates through online, as instructed by the respondent. Thereafter, the petitioner has sent all the copies of certificates to the respondent/TNPSC, through RPAD on 13.10.2021.

5.The learned counsel for the respondent submits that this Court cannot take any decision on this factual aspect, since the Honourable Apex Court in catena of judgments has decided the issue and there cannot be any change or modification in the notification and the candidates scrupulously supposed to follow the terms and conditions of the notification strictly. He also relied on the orders of the Honourable Apex Court in **Civil Appeal No.6669 of 2019 (Arising out of SLP (C) No.14093 of 2019, the State of Tamil Nadu and others Vs.G.Hemalatha & another**, wherein, our Honourable Apex Court has held as follows:-

9.Inspite 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 the teeth of the instructions, which are binding on the candidates taking the examinations.

...
12. After giving thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.

In support of his contentions, he also placed reliance on the orders of the Division Bench of this Court in W.A.No.1629 of 2021 and the relevant portion is extracted as under:-

14. It is relevant to point out that in the notification, it is clearly stated that individual communication regarding the date and time of certificate verification, oral test and counselling (as applicable) will not be sent to the applicants by post. The details will be made available on the commission's website. The applicants will be informed of the above fact only through SMS and e-mail and they should watch the commission's website in this regard. The writ petitioner fairly admits that she received message through SMS, but she has stated that it was not sent in the usual tag, but in a different tag. The result was also uploaded in the Public Service Commission website. So, we find it difficult to accept the reasons given by the writ petitioner.

15. Keeping in view the principles laid down in the above decisions, we are of the considered view that the writ appeal is to be allowed and accordingly, the same is allowed by setting aside the order passed by the learned single judge in W.P.No.1568 of 2021, dated 09.03.2021. No costs.

He also relied on the common order passed by the full bench of this Court in W.P.Nos.10010 of 2015 and 3611 of 2020, wherein, it was held as follows.

24. The instructions to candidates form part of the application for selection to the post of



Civil Judge. The instructions are in the nater of rules of selection akin to conditions in a prospectus. The candidates have accepted the conditions and participated in the selection process. The instructions to candidates clearly bar information being divulged as regards causes of their failure in their test, that too, before the completion of the selection process. Therefore, the petitioner is estopped from arguing contrary to the instructions. To ensure purity in the oral test and unbias the evaluation, marks secured by the candidate in the written examination should not be disclosed till the completion of the selection process.

6.In reply, the learned counsel for the petitioner submits that reliance is placed by TNPSC upon the Honourable Division Bench, Judgment dated 16.09.2021, in W.A.No.1629 of 2021, in the case TNPSC Vs.Jayashri and another. But, the facts of that case is entirely different from the present case on hand. In that case, the writ petitioner has admitted that she did not notice the e-mail communication and SMS sent to her by the TNPSC. In fact, SMS was sent to her as early as on 22.10.2020 (i.e) six days prior to the commencement of online certificate verification. It is due to her fault. The Honourable Division Bench, after considering the admitted facts in the case, have concluded that the writ petitioner in that case cannot be given indulgence by accepting the reason given by her. The Honorable Division Bench has also made an observation that if the reasons given are acceptable, then the Court would have considered it. The learned counsel further submits that TNPSC also relied upon the judgment of Honourable Supreme Court in 2019 SCC online SC 1113 and has contended that the instructions given in the notification are mandatory, having force of law and have to be strictly adhered to and court cannot modify or relax the instruction. Here, the petitioner's case cannot be equated with the facts and circumstances of that case.

7. The learned counsel has also relied on the Judgment of the Honourable Supreme Court in Civil Appeal No.5055 of 2012 (Arising out of SLP(C) No.7440 of 2012), dated, 10.07.2012, Asha vas. Pt.B.D, Sharma University of Health Sciences and others.

31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date, which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to



admission to such students particularly, when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The Appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks, while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the court may have to mould the relief and make exception to the cut-off date of 30th September, but in the cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, Regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate.

Finally, the Honourable Supreme Court has directed the respondent to accept the application of the petitioner in the above case, granting admission to MBBS. He also relied on another order passed by this Court in **W.P.No.20202 of 2020, K.Sampath Kumar Vs.The Additional Chief Secretary to Government, Tourism Culture & Religious Endowment Department, Secretariat, Chennai and another**, wherein, it was held as follows:-

7.In the light of the aforesaid, while making it clear that this order shall not be cited as a precedent for other similar matters, I am inclined to permit the petitioner to appear



before R2 at 10.00 a.m, tomorrow i.e 29.12.2020, where he shall present his certificates for verification. Admission to counselling shall be subject to the authorities finding the certificates to be in order and all other formalities being complied with. I make it clear that the only benefit that has been extended to the petitioner under this order is the condonation of the delay in submission of the certificates for online verification. That apart, the petitioner shall be subject to all processes as per the regular procedure followed by the respondents in the case of other selected candidates.

8. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

9. The petitioner has applied for the post of Assistant Director of Industries and Commerce (Technical) on 09.12.2019, as per the recruitment notification No.34/2019 issued by the first respondent/TNPSC. Written examination was scheduled on 25.04.2020 and on 26.04.2020 and the publication of results are scheduled as May 2020. But, in view of the pandemic situation, written examination as mentioned in the original Notification has been postponed from 25.04.2020 to 09.01.2021. The petitioner, who participated in the written examination has successfully cleared the examination. But, the results have been declared only on 22.09.2021 in the TNPSC website. It is pertinent to note that as per original notification, written examination was scheduled to be held on 25.04.2020 and 26.04.2020 and publication of results was fixed as May 2020. But, in this case, they have taken substantial time of nine months for declaring results of the examination, which was conducted in the month of January 2021.

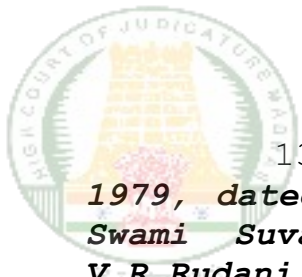
10. It is to be noted that, as per TNPSC notification, the process of uploading certificates has to be done, before the due date, through e-seva centre alone and the time was fixed as June 2020, as per the original notification. But, in view of the subsequent modification made by the respondent/TNPSC, the cut off date has been prescribed for uploading the certificates have been fixed as from 04.10.2021 to 12.10.2021, till 5.30 pm. As per notification, the declaration of result and the date for uploading the certificates would be communicated to the concerned candidates through email and SMS. The learned counsel for the petitioner claims that they have not received any e-mail or SMS from the respondent and according to the petitioner, he received SMS only at eleventh-hour, i.e on 12.10.2021 at 12.03 p.m and the same is disputed by the respondent counsel. However, he has not placed any valid material before this Court to substantiate their case that the petitioner has



been communicated through e-mail or SMS, well in advance. On the other hand, in the counter affidavit, a specific stand has been taken by the respondent that SMS was sent to the petitioner on three occasions, on 27.09.2021, 29.09.2021 and 12.10.2021. Even this aspect also could not be substantiated by the respondent's counsel with any valid documents. The learned counsel for the respondent submits that all these communications have been made through automated messages and it cannot be identified or can be placed before this Court as proof for those communications.

11. The learned counsel for the petitioner made specific plea that the petitioner, who is an aspirant has been waiting for this opportunity for several years and has also prepared for the examinations and has cleared the written examinations successfully. While so, there cannot be any delay on the part of the petitioner and on receipt of communication on 12.10.2021, he took steps immediately to upload the certificates, even he was working in Hyderabad at the relevant point of time, by requesting his age old parents to upload the certificates through nearby e-seva centre. When the parents went to the e-seva centre for uploading the certificates, it was refused by the person, who was in-charge of the said e-seva centre, in the absence of the petitioner. Thereafter, the petitioner's parents went to e-seva centre at Madurai to upload the certificates. But, unfortunately, time lapsed. However, on 13.10.2021, the petitioner had sent all the copies of certificates to the respondent/TNPSC, through RPAD. Hence, according to the petitioner, there is no fault on his part, since he made every effort to upload the certificates.

12.No doubt, it is settled position of law that the candidates are bound by the notification scrupulously. But in this case, due to pandemic situation, written examination as mentioned in the original notification has been modified by TNPSC from 25.04.2020 to 09.01.2021 and the results have also been declared conveniently, after nine months, i.e on 22.09.2021. Oral test has not been conducted so far. As per the notification, there is a physical verification of the certificates before conducting oral test. In this case, the petitioner could not upload the certificates through online, in view of the difficulties expressed by the petitioner as stated supra. The petitioner was working in Hyderabad at the relevant point of time. The reasons stated by the petitioner seems to be genuine. The object of conducting examination through TNPSC is to select the right candidates for the right post, enabling them to discharge their duty effectively. In this case, just because the petitioner could not upload the certificates within the time limit, it should not result in ruining the professional career of a meritorious candidate. Considering the fact that he is a successful candidate in written examination and he made every effort to upload the certificates, more particularly, he had sent the photocopies of certificates to the respondent, through RPAD, he should be given an opportunity to upload the certificates.



13. In the judgment passed in **Civil Appeal Nos.2704-06 of 1979, dated 21.04.1989, Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others vas. V.R.Rudani and others**, our Honourable Apex Court has held as follows:-

22.....The Judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice whenever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

14. In view of the forgoing reasons and the various decisions of the Honourable Apex Court cited supra and also taking into consideration the facts and circumstances of the case, this writ petition is allowed, with a direction to the respondent to permit the petitioner to upload the certificates as exceptional and special case, within a period of one week from the date of receipt of a copy of this order. The petitioner is directed to be present before the respondent/TNPSC within a period of one week from the date of receipt of a copy of this order and shall produce the certificates in person to the respondent. On such production of the certificates, the respondent Board shall proceed with the other stage of the notification, immediately. No costs.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vrn

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
Tamilnadu Public Service Commission,
TNPSC Road,
VOC Nagar,
Park Town,
Chennai - 600 003.

2.The Managing Director
Tamilnadu Arasu Cable TV Corporation Ltd,
Dugar Towers,
34(123) 6th Floor,
Marshalls Road,
Egmore,
Chennai - 600 008.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-36426[F] dated 29/11/2021)

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-36543[F] dated
30/11/2021)

W.P (MD) No.20028 of 2021
29.11.2021

MGJ(10.12.2021) 12P 5C