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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 02.03.2022
ORDERS PRONOUNCED ON : 16.03.2022

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

WRIT PETITION NO.19367 OF 2019
AND
W.M.P.NO.18832 OF 2019

M.Revathi

... Petitioner

-Versus-

1. The Tamil Nadu Public Service Commission,
Rep. By its Secretary,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai 600003.
2. The Registrar General,
High Court of Madras,
Chennai 600104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 1st respondent to select the petitioner to the post of Civil Judge in the Subordinate Judicial Service, by awarding marks to the answers given for Question Nos.8 and 18 in Law Paper-I in the examination conduct by the 1st respondent on 11.08.2018 afternoon (Register No.010003090) with reference to its Notification No.08/2018 dated 09.04.2018.

For Petitioner	: Mr.K.M.Vatasala for Mr.R.Annamalai
For Respondent(s)	: Mr.V.Vaithiyalingam, Standing Counsel for R1 Mr.B.Vijay, Standing Counsel for R2



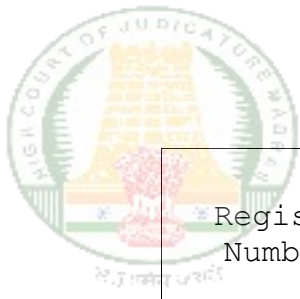
ORDER

This writ petition has been filed seeking a direction to the 1st respondent to award marks to the answers for Question Nos.8 & 18 in Law Paper-I and for a consequential direction to select the petitioner to the post of Civil Judge (Junior Division) in the Tamil Nadu Subordinate Judicial Service.

2. The facts leading to the filing of this writ petition in brief are as follows:-

(i) The petitioner is a practicing Advocate at High Court of Judicature at Madras as well as City Civil Courts at Chennai. The Tamil Nadu Public Service Commission (in short, "the Service Commission") had issued a Notification No.08/2018 dated 09.04.2018 calling for on-line applications from the eligible candidates for direct recruitment to the post of Civil Judges in the Tamil Nadu Judicial Service to fill up approximately 320 vacancies under the provisions of the Tamil Nadu State Judicial Service (Cadre and Recruitment Rules), 2007, as amended [hereafter will be referred to as "the Rules"]. The selection to the post consists of three successive stages viz., preliminary examination, main examination and viva voce test. The admission to the main examination would be short listed as decided by the service commission at the ratio of not exceeding ten times of the number of vacancies following the rule of reservation and the candidates for viva voce test would be short listed in the ration of 1: 2 or 1:3 with reference to the number of vacancies as specified in "Instructions to Applications" under the heading "Procedure of Selection". The main examination would consist of four papers viz., (i) Paper-I (Translation Paper), (ii) Paper-II (Law Paper-I), (iii) Paper III (Law Paper-II) and (iv) Paper IV (Law Paper-III). Law papers would be based on descriptive type questions and the minimum marks have been prescribed for qualifying in the main examination for each category. There is a specific condition in the notification that candidates who have secured less than the minimum qualifying marks prescribed in the main examination would not be eligible to admission to viva voce test.

(ii) The candidature of the petitioner for the post of Civil Judge (Junior Division) was accepted by the service commission and she was admitted for preliminary examination. After she had successfully got through in the preliminary examination, she was admitted to the main examination, however, she was declared as unsuccessful candidate and was not called for vivo voce test. Thereafter, the marks secured by the candidates in the main examination were published by the service Commission and the petitioner had secured marks as detailed below:-



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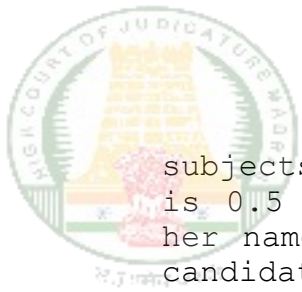
Register Number	Marks				Total Marks
	Translation Paper	Law Paper-I	Law Paper-II	Law Paper-III	
010003090	77	39.5	65	45	226.5

(iii) Since the petitioner had secured only 39.5 marks against minimum qualifying marks in Law Paper-I, she was not selected for viva voce test. In such circumstances, earlier, she had filed a writ petition in W.P.No.33387 of 2018 seeking for a direction to the service commission to round off the marks secured by the petitioner in Law Paper-I from 39.5 to 40 marks. This court, by order dated 05.03.2019, dismissed the writ petition. Challenging that order, the petitioner moved a special leave petition in SLP (C) No.11536 of 2019 before the Honourable Supreme Court and the same was also dismissed on 09.05.2019. Thereafter, the petitioner obtained copy of answer sheets under the Right to Information Act and found that even though the petitioner had written correct answers for Question Nos.8 & 18 in Law Paper-I, no marks were awarded for the both the answers. In the above circumstances, the petitioner is before this court seeking for the relief of mandamus as stated above.

3. The respondent service commission filed a detailed counter affidavit inter alia contending as follows:-

(i) That the respondent had invited applications from the eligible candidate to fill up 320 vacancies for direct recruitment to the post of Civil Judge in the Tamil Nadu State Judicial Service. The selection to the post consists of three successive stages viz., preliminary examination, main examination and viva voce test. Those who have cleared the preliminary Examination were admitted to main written examination; and those who have cleared the main written examination were admitted to oral test. Thereafter, based on the total marks obtained in written examination and oral test, candidates were called for counseling.

(ii) The petitioner who belongs to Other Category (OC) had successfully got through the preliminary examination and therefore, she was admitted to main written examination. The main examination consists of four subjects viz., Translation Paper, Law Paper-I, Law Paper-II, and Law Paper-III and the minimum passing mark for other category (OC) was 40% in each subject. The petitioner belongs to other category (OC), but, has not secured the minimum percentage of mark in Law Paper-I, though secured more than pass marks in the other



subjects. She had secured only 39.50 marks in Law Paper -I, which is 0.5 marks short to the minimum qualifying marks, therefore, her name was not taken into consideration for short listing the candidates for viva voce test.

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(iii) Earlier, the petitioner had filed a writ petition in W.P.No.33387 of 2018 before this court seeking to round off her marks in Law Paper-I from 39.5 to 40 marks. That writ petition was dismissed by this court by order dated 05.03.2019. Aggrieved by the dismissal of the writ petition, the petitioner filed SLP (C) No.11536 of 2019 and the same was also dismissed by the Honourable Supreme court on 09.05.2019. Thereafter, the petitioner has come up with the present writ petition seeking to reevaluate the answers given for Question Nos.8 & 18 in Law Paper-I and consequentially select her to the post of Civil Judge.

(iv) It is further contended by the respondent service commission that evaluation of descriptive answer scripts of main examination was undertaken directly by the District Judges and the marks were awarded based on the quality of answers presented by the candidates. The entire evaluation process was monitored by the Registrar (Recruitment), High Court of Madras. The role of the service commission was to make scrutiny of the evaluated answer scripts in terms of checking the total marks awarded by the Experts and extending coordination in the entire evaluation process.

4. It is also contended by the respondent service commission that as per Para 16(f) of the Notification dated 09.04.2018, no requests for re-valuation and re-totalling of answer sheets would be entertained and as per and para 18(v) of the Instructions to Applicants, no requests for furnishing causes of failure in written examination or for non-selection on the results of the written examination / oral test or for revaluation of answer books would be entertained. Those instructions are mandatory in nature and in view of the specific bar contained in the Notification for recruitment to the post of Civil Judge and well settled position of law, the petitioner cannot seek as a matter of right for revaluation of Law Paper-I. Therefore, the respondent service commission prayed for dismissal of the writ petition.

5. The learned counsel appearing for the petitioner submitted that though the petitioner had given correct answers to Question Nos.8 & 18 in Law Paper-I of the Main Written Examination, at the time of evaluation, no marks were awarded to those answers which amounts to miscarriage of justice. The learned counsel in an attempt to convince took this court



through the answers given by the petitioner for Question Nos.8 & 18 and contended that the answers given by the petitioners are correct, but, no marks were awarded. The learned counsel further submitted that when the earlier writ petition was filed by the petitioner for rounding off the marks, copy of answer sheets were not made available to her and therefore, the petitioner was unable to raise that issue in the earlier writ petition.

6. The learned standing counsel appearing for the 1st respondent and also the learned standing counsel appearing for the 2nd respondent, on the other hand, vehemently contended that the recruitment notification specifically made it clear that no requests for re-valuation and re-totalling of answer sheets of the preliminary and main examinations will be entertained and it is the well-settled position of law that in the absence of any enabling provision, the petitioner cannot seek for revaluation of her answer sheets. In support of their contentions, the learned standing counsel appearing for the respondents 1 and 2 respectively relied upon few decisions of the Honourable Supreme Court as well as this court on the issue and contended that in the absence of any provisions enabling the candidates seek for revaluation, the petitioner cannot as a matter of right ask for it.

7. The learned standing counsel for the service commission further submitted that the present writ petition is barred by principles of constructive res judicata, in view of the fact that this point was available to the petitioner in the earlier writ petition and the petitioner had deliberately failed to raise the same and the writ petition got dismissed. Therefore, now, it is not open for her to raise the issue in the present writ petition. According to the learned standing counsel, the writ petition is liable to be dismissed on this score also.

8. The learned standing counsel appearing for the 2nd respondent also strenuously contended that the writ petition itself is not maintainable in view of the specific bar contained in the Notification under Para 16.

9. We have considered the rival submissions carefully and also perused the records carefully.

10. The prayer sought for in the writ petition is for issuance of a mandamus, directing the respondents to award marks for the answers for Question Nos.8 & 18 in Law Paper-I of the Main Written Examination and select her to the post of Civil Judge. In other words the petitioner seeks for re-valuation of her answer sheets in Law Paper-I. There is no provision enabling the candidates to have their answer-books re-evaluated, on the



other hand, there is a specific bar under the Notification for revaluation or re-totalling of answer sheets. The relevant portion of the Notification and Instructions to Applicants are extracted hereunder.

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(a) Para 16(f) of the Notification reads as follows:-

Para 16 (f) of the Notification dated 09.04.2018:

"Request for Re-valuation and Re-totalling of answer sheets of the Preliminary Examination & Main Examination will not be entertained."

(b) Para 18(v) of Instruction to Applications reads as follows:-

"Requests for furnishing causes of failure in written exam or for non-selection on the results of the written exam/oral test or for revaluation of answer books will not be entertained."

Further more, the conditions stipulated under the Notification as well as Instructions to Applicants are mandatory, having the force of law and they should be strictly complied with.

11. In State of Tamil Nadu and others v. G.Hemalatha (SLP (C) No.14093 of 2019 dated 21.03.2019), the Honourable Supreme Court has held that "Instructions to the Applicants" issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. The relevant portions of the judgment read as as follows:-

8. 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.

... ..
... .. 13. After giving a 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.

12. The Honourable Supreme Court in a catena of decisions has consistently taken the view that in the absence of any provision for revaluation, the courts cannot order for revaluation of answer scripts.

13. In Himachal Pradesh Public Service Commission v. Mukesh Thakur, (2010) 6 SCC 759, the Honourable Supreme Court has held as follows:-

"20. In view of the above, it was not permissible for the High Court to examine the question papers and answer sheets itself, particularly, when the Commission had assessed the inter se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for Respondent 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to Law. Had it been other subjects like Physics, Chemistry and Mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

14. The above said judgment has been subsequently followed in Ran Vijay Singh v. State of Uttar Pradesh (2018) 2 SCC 357 wherein at para 30, after surveying its various judgments on the issue the Honourable Supreme Court has held as under:-

"30. The law on the subject is therefore, quite clear and we only propose to highlight a few significant conclusions. They are:

30.1. If a statute, Rule or Regulation governing an examination permits the re-evaluation of an answer sheet or scrutiny of an answer sheet as a matter of right, then the authority conducting the examination may permit it;

30.2. If a statute, Rule or Regulation governing an examination does not permit re-evaluation or scrutiny of an answer sheet (as distinct from prohibiting it) then the court may permit re-evaluation or scrutiny only if it is demonstrated very clearly, without any "inferential process of reasoning or by a process of rationalisation" and only in rare



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or exceptional cases that a material error has been committed;

30.3. The court should not at all re-evaluate or scrutinise the answer sheets of a candidate—it has no expertise in the matter and academic matters are best left to academics;

30.4. The court should presume the correctness of the key answers and proceed on that assumption; and

30.5. In the event of a doubt, the benefit should go to the examination authority rather than to the candidate.”

15. Recently, in *Vikesh Kumar Gupta v. State of Rajasthan* (2021) 2 SCC 309, the Honourable Supreme Court has held that courts cannot examine the correctness of the answers given to the question and come to a different conclusion from that of the expert committee. The relevant portion of the judgment reads as follows:-

“16. In view of the above law laid down by this Court, it was not open to the Division Bench to have examined the correctness of the questions and the answer key to come to a conclusion different from that of the expert committee in its judgment dated 12-3-2019 [*Bhunda Ram v. State of Rajasthan*, 2019 SCC OnLine Raj 7416] . Reliance was placed by the appellants on *Richal v. Rajasthan Public Service Commission* [*Richal v. Rajasthan Public Service Commission*, (2018) 8 SCC 81: (2018) 2 SCC (L&S) 456] . In the said judgment, this Court interfered with the selection process only after obtaining the opinion of an expert committee but did not enter into the correctness of the questions and answers by itself. Therefore, the said judgment is not relevant for adjudication of the dispute in this case.”

16. On considering the facts of the case and the settled position of law, we are of the view that the prayer sought for by the petitioner cannot be granted and the writ petition deserves only to be dismissed.

In the result, this writ petition is dismissed. No costs. Consequently, connected WMP stands closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kmk



To

1. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town, Chennai 600003.

2. The Registrar General,
High Court of Madras,
Chennai 600104.

+1cc to Mr.R.Annamalai, Advocate, S.R.No.17681

+1cc to Mr.V.Vaithiyalingam, Advocate, S.R.No.18490

W.P.No.19367 of 2019

MT(CO)
RLP(04/04/2022)