



W.P(MD)No.9506 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9506 of 2022

and

W.M.P.(MD)No.6795 of 2022

C.Jeyasuba

... Petitioner

Vs.

1.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Chennai – 600 003.

2.Bar Council of India,
Rep. by its Secretary,
No.21, Rose Avenue Institutional Area,
Near Bal Bhawan,
New Delhi – 110 002.

3.The Bar Counsel of Tamil Nadu and Puducherry,
Rep. by its Chairman,
High Court Campus,
Chennai – 600 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order of the 1st respondent dated 01.05.2022, published in the website and quash the same and consequently direct the 1st respondent to permit the petitioner to participate in the main written



W.P(MD)No.9506 of 2022

examination scheduled on 07.05.2022 and 08.05.2022 for the post of Assistant Public Prosecutor Grade-II.

For Petitioner : Mr.N.Vignesh

For Respondents : Mr.V.Panneer Selvam,
Standing Counsel for R1
Mrs.S.Mahalakshmi,
Standing Counsel for R2.
Mr.Nirjan S.Kumar for R3.

ORDER

Heard the learned counsel on either side.

2.TNPSC issued notification dated 25.08.2021 for recruitment to the post of Additional Public Prosecutor Grade II. The petitioner applied in response thereto. The petitioner was however not issued with hall ticket. TNPSC took a stand that after getting enrolled, the petitioner had joined M.L. degree and if the period of study undergone by the petitioner for clearing M.L. degree is taken into account, then she would not fulfil the requirement of five years of active practice before the Criminal Court. Challenging the same, this writ petition came to be filed.



W.P(MD)No.9506 of 2022

3.Vide order dated 05.05.2022, a learned Judge of this Court granted the following interim order:-

“The petitioner submits that pursuant to Advertisement No.590, Notification No.10/2021 dated 25.08.2021, issued by the respondent/Tamil Nadu Public Service Commission, Chennai, calling for applications for direct recruitment to fill up 50 posts of Assistant Public Prosecutor Grade-II in Prosecution Department included in the Tamil Nadu General Service, she applied for the same. Thereafter, she was issued with a Hall Ticket for the preliminary examination on 06.11.2021 and the petitioner also wrote the preliminary examination. However, she was not issued with any Hall Ticket for the main written examination scheduled to be held on 07.05.2022 and 08.05.2022, on the ground that she has insufficient Bar experience of 5 years in Criminal Courts. Challenging the same, the petitioner has come to this Court.

2. Mr.S.Panneerselvam, learned standing counsel for the TNPSC would submit that the Committee constituted by the Director of Prosecution on scrutinising the application submitted by the petitioner, came to the conclusion that the petitioner has insufficient experience of active practice in Criminal Courts and hence, the impugned rejection order has rightly been passed.



W.P(MD)No.9506 of 2022

3. *Learned counsel for the petitioner has brought to the notice of this Court to the Experience Certificate issued by the Bar Association showing that she has been continuously practicing from 29.10.2015 to 25.08.2021 and regularly appearing in Combined Courts, Ambasamudram, conducting case on her own. Therefore, the learned counsel submits that the petitioner is entitled to participate in the main written examination.*

4. *In any event, when the petitioner is able to satisfy this Court that she has sufficient active practice in criminal Courts, she is entitled to be considered. Accordingly, the respondent is directed to issue Hall-Ticket to the petitioner to write the main written examination scheduled to be held on 07.05.2022 and 08.05.2022 subject to the result of the writ petition.*

5. *W.M.P.(MD) No.6796 of 2022 is disposed of accordingly.*

6. *Post the writ petition after four weeks for filing counter.”*

4. Pursuant to the said interim order, the writ petitioner wrote the examination. However, the results have not been published.



W.P(MD)No.9506 of 2022

5.The respondents have filed counter affidavit and the learned standing counsel took me through its contents and contended that the impugned order does not warrant interference.

6.I carefully considered the rival contentions and went through the materials on record. The learned counsel for the petitioner draws my attention to the resolution passed by the Bar Council of India in December 2009 resolving that the practising advocates can join in LLM course as a regular student without suspending the practice. I am also informed that M.L degree course conducted in Tamilnadu do not stipulate that the students must attend day long. The number of hours is confined to three. If that be so, a student can attend the college in the morning and attend the Court in the afternoon or vice versa. The learned counsel for the petitioner has relied on a catena of decisions which have dealt with the issue of active practice. The decisions are as follows:-

“(1998) IILLJ 186 P H (Karan Jagdish Kaur Vs. Punjab School Education Board)

Tahir Ahmad Dar v. State of J & K and Others in SWP No.1127 of 2016, dated 07.09.2017 and

Dharmendra Kumar vs Bar Council of India in Second Appeal No:CIC/BCOI/A/2018/146320-BJ, dated 20.02.2020”



W.P(MD)No.9506 of 2022

WEB COPY

7. In light of the aforesaid decisions and the resolution passed by the Bar Council of India, I am more than satisfied that the period undergone by the petitioner for pursuing M.L. degree cannot be excluded. The impugned order is set aside and the writ petition is allowed. TNPSC is directed to publish the petitioner's result. No costs. Consequently, connected miscellaneous petition is closed.

17.11.2022

Index : Yes / No
Internet : Yes/ No
ias



WEB COPY



W.P(MD)No.9506 of 2022



WEB COPY



W.P(MD)No.9506 of 2022

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.9506 of 2022

17.11.2022