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W.P.Nos.554 & 6216 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27..07..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.554 of 2022
&
W.M.P.Nos.593, 596 & 32876 of 2022
and
Writ Petition No.6216 of 2022
&
W.M.P.Nos.6277 & 6278 of 2022

W.P.No.554 of 2022

C.Priyanga

..... Petitioner

-Versus-

- 1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C. Nagar,
Chennai 600 003.
- 2.The Industries Commissioner and
Director of Industries and Commerce,
Directorate of Industries and Commerce,
Guindy, Chennai 600 032.
- 3.G.Akila
[Regn. No.2600001048]
[3rd respondent was impleaded by order of this court dated 27.01.2022
made in W.M.P.No.1091 of 2022 in W.P.No.554 of 2022]



W.P.Nos.554 & 6216 of 2022

4.The Secretary to Government,
Micro, Small and Medium Enterprises Department,
Secretariat, Chennai 600 003.

[4th respondent was impleaded by order of this court dated 01.06.2023
made in W.M.P.No.32873 of 2022 in W.P.No.554 of 2022]

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned provisional selection list dated 08.02.2022 for the post of Assistant Director of Industries and Commerce (Technical) in Micro, Small and Medium Enterprises (E1) Department included in Tamil Nadu Industries Service, 2019 issued by the 1st respondent as per Notification No.34 of 2019 dated 09.12.2019 and to quash the same insofar as pertaining to the 3rd respondent concerned and consequently direct the 1st respondent to select the petitioner for the post of Assistant Director of Industries and Commerce (Technical).

[Originally, the writ petition challenged the ranking list dated 06.01.2022. Subsequently, the prayer has been amended by order dated 01.06.2023 made in W.M.P.No.32871 of 2022 in W.P.No.554 of 2022]

W.P.No.6216 of 2022

Dhivya Janani.K.

..... Petitioner

-Versus-

1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C. Nagar,
Chennai 600 003.



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2.The Secretary to the Government,
Micro, Small & Medium Enterprises Department,
Secretariat,
Chennai 600 003.

3.The Industries Commissioner and
Director of Industries and Commerce,
Directorate of Industries and Commerce,
Guindy,
Chennai 600 032.

4.K.Kalai Selvi
[Regn. No.2500001128]

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned provisional selection list dated 08.02.2022 for the post of Assistant Director of Industries and Commerce (Technical) in Micro, Small and Medium Enterprises (E1) Department included in Tamil Nadu Industries Service, 2019 issued by the 1st respondent as per Notification No.34 of 2019 dated 09.12.2019 and to quash the same insofar as pertaining to the 4th respondent is concerned and consequently direct the 1st respondent to select the petitioner for the post of Assistant Director of Industries and Commerce (Technical).



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For Petitioner : *Mr.S.T.S.Murthi,*
Senior Counsel for
Mr.R.Govindasamy for
petitioner in both WPs

For Respondents : *Mr.R.Bharanidharan*
for R1 in both WPs
Mr.V.Jeevagiridharan,
Addl. Government Pleader
for R2 & R4 in W.P.No.554 of
2022 and R2 & R3 in
W.P.No.6216 of 2022
Mr.L.Chandrakumar and
Mr.Nalinidhar.T.
for M/s.VPN Associates
for R3 in W.P.No.554 of 2022
Mr.V.Stalin for R4 in
W.P.No.6216 of 2022

COMMON ORDER

W.P.No.554 of 2022 challenges the provisional selection of the 3rd respondent - G.Akila [Regn.No.2600001048], while W.P.No.6216 of 2022 challenges the provisional selection of the 4th respondent - E.Kalaiselvi [Regn.No.2500001128] by the 1st respondent – Secretary, Tamil Nadu Public Service Commission for appointment to the post of Assistant Director of Industries and Commerce (Technical) in Micro, Small and Medium Enterprises [EI(1)] Department included in Tamil Nadu Industries Service, 2019.



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2. The brief facts leading to the filing of W.P.No.554 of 2022 are as under:-

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(a) The petitioner belongs to a Scheduled Caste community. She is graduated in B.E. (Printing Technology). After her graduation, she worked for Technova Imaging Systems Private Limited, Saidapet, Chennai, which involved in the manufacturing and marketing of offset plates and chemicals, marketing of equipment and software. She worked there from 08.08.2016 to 17.05.2019. On 09.02.2019, the 1st respondent published an Advertisement, vide Advertisement No.564 [Notification No.34 of 2019] inviting applications from the eligible candidates through online for direct recruitment to the posts of Assistant Director of Industries and Commerce (Technical) and Assistant Superintendent (Chemical Wing) in the Department of Micro, Small and Medium Enterprises [EI(1)] Department included in Tamil Nadu Industries Service for the year 2019. There were 11 vacancies notified in the post of Assistant Director of Industries and Commerce (Technical) and 1 vacancy was notified in the post of Assistant Superintendent (Chemical Wing). The educational qualification prescribed for the post of Assistant Director is Bachelor of Engineering or Bachelor of Technology of any discipline, except Civil Engineering and Architectural Engineering and practical experience in a factory or workshop for a period of not less than one year. The experience prescribed for the post of Assistant Director of Industries and Commerce (Technical) should have been obtained from a factory or workshop



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recognized by the State/Central Government.

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(b) She applied for the post of Assistant Director pursuant to the notification referred to hereinabove with all necessary educational and experience certificates. She attended the written examination held on 09.01.2021 and she successfully came out in the written examination. She was called for interview on 17.12.2021. She attended the interview with required certificates and the certificates were all verified on the same day. After the interview, a ranking list was published on 06.01.2022 for counselling. She was placed at 29 in the ranking list with a total mark of 322.50 both in the written examination and oral interview under SC category for the counselling. She attended the counselling on 19.01.2022. To her shock and surprise, one Akila, who was not having adequate experience and not fulfilled the eligibility condition stipulated in the notification, though was at 26th rank, has been selected provisionally for appointment to the said post. The grievance of the petitioner is that in gross violation of eligibility condition mandated in the notification, the 3rd respondent has been selected and given appointment to the post. Hence, the present writ petition.

3. The brief facts leading to the filing of W.P.No.6216 of 2022 are as under:-

(a) The petitioner belongs to Most Backward Class (MBC) community. She is graduated in B.E. (Chemical Engineering). After her



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graduation, she had worked for Sterlite Industries India Limited from 03.06.2008 to 09.03.2009 and for Hindustan Zinc Limited at Dariba, as Process Engineer from 12.03.2009 to 26.03.2011. She had 3 years of practical experience in a factory / workshop.

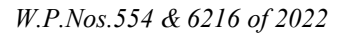
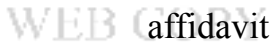
(b) She applied for the post of Assistant Director pursuant to the notification referred to hereinabove with all necessary educational and experience certificates. She attended the written examination held on 09.01.2021 and she successfully came out in the written examination. She was called for interview on 17.12.2021. She attended the interview with required certificates and the certificates were all verified on the same day. After the interview, a ranking list was published on 06.01.2022 for counselling. She was placed at 15 in the ranking list with a total mark of 364.25 both in the written examination and oral interview under MBC/DC category for the counselling. She attended the counselling on 19.01.2022. To her shock and surprise, one E.Kalaiselvi, who was not having adequate experience and not fulfilled the eligibility condition stipulated in the notification, though was at 14th rank, has been selected provisionally for appointment to the said post. The grievance of the petitioner is that in gross violation of eligibility condition mandated in the notification, the 4th respondent has been given selected and appointment to the post. Hence, the present writ petition.



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4.1. The 1st respondent – Secretary, TNPSC, Chennai, filed his counter affidavit in W.P.No.554 of 2022 inter alia contending that the Secretary MSME Department, was requested to verify the practical experience certificates uploaded by the candidates vide letter dated 30.03.2021 and the Secretary, MSME, in turn, by his letter dated 05.04.2021 had requested the Director of industries and Commerce to depute the officers to verify the experience certificates. Accordingly, the officers deputed by the Head of the Department verified the experience certificates and based on the verification report of the officers deputed by the Director of Industries and Commerce, applications of the candidates with suitable experience have been admitted for further selection.

4.2. It is further contended by the 1st respondent that the petitioner had not reached the zone of consideration for provisional selection to the post based on marks secured by her, rank order, rule of reservation of appointment and number of vacancies available. Whereas 3rd respondent, who belonged to the same community, had secured 331.50 marks both in the written and oral test and was placed at 26 in the ranking list for counselling, reached the zone of selection in the counselling. The practical experience certificate uploaded by the 3rd respondent was verified and accepted by the Officers deputed by the Head of Department.



6. The respondents 2 and 4 have filed counter affidavit in W.P.No.554 of 2022 inter alia contending that the 3rd respondent in W.P.No.554 of 2022 had worked as Assistant Professor in Dr.G.U. Pope College of Engineering, Thoothukudi, from 08.09.2010 to 25.06.2018. The experts from the department concerned had opined that “contours of the definition of factory / workshop experience in factory / workshop experience would include Teaching Theory and Practical to students as well as maintaining Laboratory Equipments” Since the 3rd respondent had worked as Assistant Professor in the College of Engineering, an organization recognized by the Government, she had fulfilled the eligibility condition and therefore, she was considered for provisional appointment to the post of Assistant Director. (Technical).



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7. The respondents 2 and 4 filed a separate counter affidavit in W.P.No.6216 of 2022 inter alia contending that as per the letter of the Development Commissioner/SSI, Ministry of Small Scale Industries, Government of India, vide letter NO.5(1)/2001-SSIBD&Pol dated 10.09.2021, IT related activities and IT enabled services have been treated as Industrial Activities. The experts from the department concerned were of the opinion that “contours of the definition of factory/workshop experience in factory/ workshop experience have been broadened to accommodate computer software development and other IT related venture as industrial activities. The 4th respondent – Kalai Selvi had worked in Tata Consultancy Services as Assistant System Engineer from 06.07.2016 to 19.12.2017. As TCS is an organization recognized by the Government and the 4th respondent had gained experience in TCS, the experts opined that the individual had fulfilled the eligibility condition.

8. The 3rd respondent – G.Akila in W.P.No.554 of 2022 has filed counter affidavit denying the allegations in the writ petition and inter alia contending that she had fulfilled the experience criteria. She has been given appointment purely on merits and based on her relevant experience. She accordingly joined duty on 20.06.2022 as Assistant Director (Technical)/Project Manager, District Industries Centre at Thoothukudi and has been working as such.



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9. The 4th respondent – E.Kalaiselvi in W.P.No.6216 of 2022 has filed counter affidavit denying the averments in the writ petition and inter alia contending that TCS is also a factory in view of the law settled by the Supreme Court and it comes within the purview of the factory. Since TCS has been registered under the Central Government, her experience for 1 year and 4 months in TCS as Assistant System Engineer was considered by the experts and they were satisfied with the same. MSME Department has also issued a circular dated 16.11.2007 specifying that the software development consultancy services are MSME and for all practical purposes it should be treated as a manufacturing industry. Further MSME by communication dated 10.09.2021 informed that IT related activities and IT enabled services shall be treated as industrial activities eligible for registration as small scale industries. She was selected strictly as per the notification.

10. Heard Mr.S.T.S.Murthi, learned senior counsel appearing for the petitioner in both the writ petitions; Mr.R.Bharanidharan, learned standing counsel for TNPSC; Mr.V.Jeevagiridharan, learned Additional Government Pleader for State as well as the Director of industries and Commerce; Mr.L.Chandrakumar, learned counsel for the private respondent G.Akila in W.P.No.554 of 2022 and Mr.V.Stalin, learned counsel for the private respondent E.Kalaiselvi in W.P.No.6216 of 2022.



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11. Mr.S.T.S.Murthi would submit that the petitioner C.Priyanga (W.P.No.554 of 2022) had worked for Technova Imaging Systems Private Limited, Saidapet, Chennai, which involved in the manufacturing and marketing of offset plates and chemicals, marketing of equipment and software, from 08.08.2016 to 17.05.2019 and it comes under the Factories Act. However, without considering the petitioner-C.Priyanga for appointment, the 3rd respondent G.Akila, who did not fulfil the eligibility condition of experience and had only work experience as Assistant Professor in a Engineering College, was considered for appointment provisionally.

12. Nextly, Mr.S.T.S.Murthi would, insofar as Dhivya Janani (W.P.No.6216) is concerned, oppose the appointment of the 4th respondent – Kalaiselvi and submit that Dhivya Janani (petitioner in W.P.No.6216 of 2022) had possessed B.E. Degree in Chemical Engineering and after her collegiate education, she had worked for Sterlite Industries India Limited between June 2008 and March 2009 and thereafter for Hindustan Zinc Limited as Process Engineer (Production) from March, 2009 to March, 2011. Thus, according to the learned senior counsel, instead of considering the petitioner, the TNPSC has considered the 4th respondent-Kalaiselvi, who was not having the required practical experience in the industrial line for appointment to the post of Assistant Director.



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The 4th respondent had obtained experience only in computer sector/software industry which cannot be equated to factory or workshop experience was considered for appointment and therefore, according to him, the selection of Kalaiselvi is against the eligibility condition and the same is liable to be set aside.

13. Mr.S.T.S.Murthi, placing reliance upon the information received from the Public Information Officer / Directorate of Industrial Safety and Health, Guindy, Chennai, would submit that IT companies, educational institutions and laboratories do not come under the purview of Factories Act, 1948. Therefore, according to him, the selection of G.Akila based on her experience obtained in the Engineering College as Assistant Professor is not legally sustainable and as she had not fulfilled the eligibility condition of experience, the TNPSC ought not to have selected her for appointment and instead, they should have considered the petitioner – C.Priyanga for appointment.

14. In support of his contention, Mr.S.T.S.Murthi would place strong reliance on the judgements of the Supreme Court in **(1) Seelan Raj. R. V. The Presiding Officer [1997 (II) CTC 317]; (2) Union Public Service Commission v. Gyan Prakash Srivastava [(2012) 1 SCC 537]; (3) Alka Ojha v. Rajasthan Public Service Commission, [(2011) 9 SCC 438]; and (4) Veer Pal Singh v. Secretary, Ministry of Defence, [(2013) 8 SCC 83].**



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15. Mr.L.Chandrakumar, would on the other hand contend that the 3rd respondent – G.Akila had requisite educational qualification and she had worked as Assistant Professor in Dr.G.U. Pope College of Engineering, Thoothukudi from 08.09.2010 to 25.06.2018. The experts from the department concerned had opined that the definition of factory / workshop experience in factory / workshop experience would include Teaching Theory and Practical to the students as well as maintaining Laboratory Equipments. The college where the said Akila had worked is an institution recognized by the AICTE, a statutory body and therefore, she had fulfilled the eligibility condition. The 3rd respondent was considered for appointment to the post of Assistant Director based on merits and her experience in the relevant field as required under the employment notification and therefore, the petitioner, who had not at all reached the zone of consideration, cannot challenge the selection of G.Akila and the writ petition is liable to be dismissed.

16. Mr.V.Lenin would submit that the 4th respondent-Kalaiselvi in W.P.No.6216 of 2022 had possessed B.Tech Degree in ECE and M.Tech. She comes under MBC/DC (Women) category. After her post graduation, she had worked as Assistant System Engineer for TCS from 06.07.2016 to 19.12.2017. Thus, she had experience for one year and four months in TCS as Assistant System Engineer. The TCS has been registered under the Central Government and it will come under the purview of the factory. The MSME Department has also



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considered the IT industry as a manufacturing industry for all practical purposes.

Development Commissioner/SSI, Ministry of Small Scale Industries, Government of India, vide letter NO.5(1)/2001-SSIBD&Pol dated 10.09.2021, clarified that IT related activities and IT enabled services have been treated as Industrial Activities. The TNPSC had, based on the report of the experts in the field, came to a conclusion that the 4th respondent had adequate experience as required under the notification. Therefore, he would submit that the writ petition is devoid of merits and the same is liable only to be dismissed.

17. I have carefully considered the rival submissions and perused the materials placed on record carefully.

18. The qualifications mentioned in the notification to the extent it is relevant to the post of Assistant Director, Industries and Commerce (Technical) are:

“(i) Bachelor of Engineering or Bachelor of Technology degree of any discipline except Civil Engineering and Architectural Engineering

(ii) Practical Experience in a factory or workshop for a period of not less than one year.

The experience for the post of Assistant Director of Industries and Commerce (Technical) should have been obtained from a factory or workshop recognized by the State Government / Central



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Government.”

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19. There is no dispute with regard to eligibility conditions – qualification and experience prescribed in the notification. Similarly, there is also no dispute with respect to education qualification possessed by C.Priyanga, the petitioner and G.Akila, the 3rd respondent in W.P.No.554 of 2022 and Dhivya Janani.K., the petitioner and E.Kalaiselvi, the 4th respondent in W.P.No.6216 of 2022. The dispute is only with regard to the practical experience said to have been obtained by G.Akila, the 3rd respondent in W.P.No.554 of 2022 in an Engineering College and Dhivya Janani.K., the petitioner and E.Kalaiselvi in a software development company.

20. Let this court, at first, take up the case of C.Priyanga, the petitioner in W.P.No.554 of 2022 for consideration: -

21. In the light of the backdrop of the facts set out already, the point that crops up for consideration in the writ petition is

Whether the petitioner in the writ petition is fully qualified with practical experience and is eligible for appointment to the post on merits?



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22. The grievance voiced by the petitioner is that she is fully qualified as required under the notification. Though she established before the TNPSC and the experts concerned, who were required to verify the experience of the candidates that she had obtained experience of 2 years and 10 months in Technova Imaging Systems Private Limited which engaged in manufacturing and marketing of offset plates and chemicals and marketing of equipment and software, she was not considered for appointment to the post and on the contrary, the 3rd respondent who was not possessing adequate experience and was having experience only as Assistant Professor in an Engineering College was considered for appointment to the post.

23. This court was informed that after the provisional selection, the petitioner was given appointment and she had also joined the services of the department.

24. For easy reference, the educational qualifications of the petitioner and 3rd respondent in W.P.No.554 of 2022 and experience said to have been obtained by them in the industrial/workshop are reproduced in the tabular column:-



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Name of the candidate	Qualification	Duration of Experience	Gained Experience in
C.Priyanka [Petitioner]	B.E. Printing Technology	08.08.2016 to 17.05.2019	Technova Imaging Systems Private Limited, Saidapet, Chennai
G.Akila [3 rd respondent]	M.E.	08.08.2010 to 25.06.2018	Dr.G.U.Pope College of Engineering Teaching, Lab Work and Equipment Maintenance

25. The marks obtained by the petitioner and the 3rd respondent in W.P.No.554 of 2022, communal category, their position in the ranking list for counselling and the result of the selection process are reproduced in the tabular column:-

Name of the candidate	Marks secured (both in Written Exam and Oral Interview)	Position in the ranking list	Communal Category	Result
C.Priyanka [Petitioner]	322.50 (280.50 +42.00)	29	SC	Not Selected
G.Akila [3 rd respondent]	331.50 (279.00 + 52.50)	26	SC	Selected



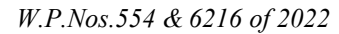
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26. Admittedly, the petitioner was positioned much below the 4th respondent in the ranking list.

27. According to the petitioner, as per the information received from the Public Information Officer/Joint Director, Directorate of Industrial Safety and Health, Guindy, Chennai, Information Technology (IT) Companies, Educational Institution and Lab do not come under the purview of the Factories Act. The Directorate of Industrial Safety and Health, Guindy, Chennai, is the authority competent to register the factories as per the Factories Act, 1948 and competent to verify the practical experience certificate as and when required by the TNPSC. Therefore, it is the main contention of the petitioner that the experience certificates were not verified by the competent authorities and therefore, the selection of the 3rd respondent is not legally valid.

28. On the other hand, the 3rd respondent contended that she had obtained workshop experience in the Engineering college. The 1st respondent on his side has produced a communication addressed by the General Manager, District Industries Centre, Kancheepuram to the Industries Commissioner and Director of Industries and Commerce, Guindy, Chennai, vide letter in Rc.No.2326/A1/2023 dated 20.07.2023, was placed before this court for perusal.

29. A careful perusal of the above communication would show that



Chockalingam, the then Joint Director (Engineering). The opinion arrived at by

“Tmt.Akila worked as an Assistant Professor in Dr.G.U.Pope College of Engineering with her nature of work mentioned in the experience certificate involving Lab experience such as:-

- According to the experts, the lab experience possessed by the candidate Tmt.Akila is an industrial activity considering the equipments and machineries handled by her through the course of her job over the period of eight years and the role of such equipments and machineries in the Measurement, Testing and Quality control of the industrial activity.

- <https://www.mhc.tn.gov.in/judis>



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2. Quality control plays a crucial role in the manufacturing process and Quality is key to establish a successful business.

3. From raw material to finished products, Quality testing occurs in every step of manufacturing process.

The petitioner has taken the condition that stipulates that the candidate should possess factory experience in a factory or workshop in the conventional sense of the term. With the advent of Industries 4.0, the definition of workshop experience cannot be confined to the literal perception. The contours of the definition of factory / workshop experience have been broadened to accommodate Measurement, Testing and Quality Control as an Industrial Activity. Taking this view, as an Engineering Graduate, Tmt.Akila the third respondent in the Writ Petition, possessed lab experience which is an industrial activity.

30. The Black's Law Dictionary defines the expression “**workshop**” as under:

- “1. Shop floor where physical work is carried out
2. Seminar or training class given to solve tasks related to work to gain hands-on-experience.”

31. The Oxford Dictionary, defines the expression “**workshop**” as under:-

“a period of discussion and practical work on a particular subject, in which a group of people share



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their knowledge and experience.”

32. Admittedly, the college where the petitioner had worked as Assistant Professor has been recognized by All India Council for Technical Education (AICTE) which is a statutory body and a National-Level Council for Technical Education under the Department of Higher Education. Its responsibility is to make proper planning and coordinated development of the technical education and management education system in India, the promotion of qualitative improvement of such education in relation to planned quantitative growth and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith. The experts had opined that the Akila had worked in the college as Assistant Professor and by working in the lab attached to the college and maintaining the equipments, she had also obtained workshop experience which is in industrial activity. The eligibility condition with respect to experience prescribed in the notification issued by the respondent-TNPSC cannot be given a narrow and literal meaning that it would apply only to the person who had obtained work experience in a factory or workshop recognized by the Central Government / State Government.

33. In the case of **Secretary, Department of Health and Family Welfare v. Anita Puri (Dr.)**, (1996) 6 SCC 282, the Supreme Court held as under:-

"9. ... It is too well settled that when a selection



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is made by an expert body like the Public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.

34. In the case of **Ganpat Singh Gangaram Singh Rajput vs. Gulbarga University [(2014) 3 SCC 767]**, the Supreme Court has held thus:

“17. When the view taken by the expert body is one of the possible view, the same is fit to be accepted. Further, the yardstick would be different when it concerns eligibility conditions pertaining to “qualification’ and ‘experience’ . In case of experience, it is best known to the expert



body in the field in regard to the actual work done and therefore, its opinion is of higher degree deserving acceptance ordinarily.”

35. Therefore, this court is of the considered view that when the expert body assessed the experience obtained in the college by teaching as well as doing lab and equipment maintenance work by the selected candidate as Assistant Professor and found that the work discharged by the selected candidate was an industrial activity, this court cannot take a different view to hold that the opinion of the experts is incorrect, unless it is shown that the opinion of the experts is totally arbitrary or unreasonable. There appears justification in the conclusion arrived at by the experts. When two views are possible and experts have taken a reasonable view, the same deserves acceptance. It is the consistent view of the Supreme Court that courts shall not ordinarily test the opinion of the experts unless their decision is totally arbitrary or unreasonable. Therefore, the contention of the petitioner that the 3rd respondent was not having adequate experience and her selection for appointment to the post of Assistant Director (Technical) does not appeal to me and the writ petition has to necessarily fail.

36. Further, the notification does not stipulate that candidate should have obtained experience only from the factory and it also states that any experience from the workshop will also be considered. Therefore, the information furnished



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by the Directorate of Industrial Safety and Health, Guindy, Chennai, under the Right to Information Act, 2005 will no way help the case of the petitioner.

37. Insofar as the merits is concerned, it not in dispute that the 3rd respondent was positioned at serial No.26 in the ranking list. Whereas the petitioner was positioned at serial No.29. The TNPSC after having taken into account the recommendations of the opinion of the experts on the practical experience of the candidates, considered the 3rd respondent to be eligible for appointment to the post and accordingly, selected her and published the provisional list of selection. This court does not find any perversity or illegality in the selection of the 3rd respondent.

38. For the foregoing discussions, this court is of the view that the 3rd respondent was fully qualified with adequate practical workshop experience for appointment to the post and she was selected on merits and, therefore, the contention of the petitioner that the 3rd respondent was unqualified for the post as she did not possess practical experience cannot be countenanced. The writ petition is thus devoid of merits and the same deserves only to be dismissed.

39. Now, let this court consider the case of Dhivya Janani, the petitioner in the other writ petition in W.P.No.6216 of 2022:-

40. In the light of the backdrop of the facts set out already, the point that crops up for consideration in the writ petition is



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Whether the petitioner in the writ petition is fully qualified with practical experience and is eligible for appointment to the post on merits?

41. For easy reference, the educational qualifications of the petitioner and 4th respondent in W.P.No.6216 of 2022 and experience said to have been obtained by them in the industrial/workshop are reproduced in the tabular column:-

Name of the candidate	Qualification	Duration of Experience	Gained Experience in
Dhivya Janani.K [Petitioner]	B.E. Chemical Engineering	03.06.2008 to 09.03.2009	Sterlite Industries India Limited
		12.03.2009 to 26.03.2011	Hindustan Zinc Limited
Kalaiselvi.E [4 th respondent]	B.Tech (ECE) and M.Tech	06.07.2016 to 19.12.2017	Tata Consultancy Services
		12.02.2021 till date	Assistant Engineer (Industries) in Vellore

42. Again for easy reference, the marks obtained by the petitioner and the 4th respondent in W.P.No.6216 of 2022, communal category, their position in the ranking list for counselling and the result of the selection process are reproduced in the tabular column:-



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Name of the candidate	Marks secured (both in Written Exam and Oral Interview)	Position in the ranking list	Communal Category	Result
Dhivya Janani K [Petitioner]	364.25 (317.00 + 47.25)	15	MBC/DC (W)	Not Selected
Kalaiselvi E [4th respondent]	365.25 (318.00 + 47.25)	14	MBC/DC (W)	Selected

43. Admittedly, the petitioner was positioned in the ranking list immediately below the 4th respondent.

44. Sub-section (m) of Section 2 of The Factories Act, 1948 defines the term “**factory**” as under:-

“2. **Interpretation.**—In this Act, unless there is anything repugnant in the subject or context,—

.....

.....

(m) “**factory**” means any premises including the precincts thereof—

(i) whereon 10 or more workers are working, or



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were working, on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or

(ii) whereon twenty or more workers are working, or working on any day of the preceding 12 months and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include (i) a mine subject to the operation of the Mines Act 1952, or (ii) a mobile unit belonging to the armed forces of the Union of India, (iii) a railway running shed, or (iv) a hotel, (v) a restaurant, (vi) eating place., (vii) poly house or (viii) Green house engaged in the activity of floriculture or pomology or high value crops.

Explanation I: For computing the number of workers for the purposes of this clause, all the workers in different groups and relays in a day shall be taken into account.

Explanation II: For the purpose of this clause, the mere



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fact that an electronic Data Processing Unit or a computer Unit is installed in any premises or a part thereof, shall not be construed to make it a factory if no manufacturing process is being carried out in such premises or a part thereof.”

45. Relying upon the information obtained through The Right to Information Act, 2005 vide Lr.No.F1/14466/2020 dated 21.09.2020, the learned counsel for the petitioner would submit that IT companies, educational institutions and laboratories do not come under the purview of the Factories Act, 1948. The said information was furnished by the Public Information Officer/Joint Director (Testing and Safety), Directorate of Industrial Safety and Health, Guindy, Chennai 600 032.

46. On the contrary, the communication from the Development Commissioner/SSI, Ministry of Small Scale Industries, Government of India, vide letter NO.5(1)/2001-SSIBD&Pol dated 10.09.2021, makes it clear that IT related activities and IT enabled services have been treated as Industrial Activities. The TNPSC had, based on the opinion of the experts, comes to a conclusion that the 4th respondent had requisite experience as required under the notification.

47. Under the above said communication of the Director, SSI BD & POL in 5(1)/2001-SSI BD & POL dated 10.09.2001 addressed to Secretaries of



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Industries/Commissioners/Director of Industries of all States/Union Territories

and Director of Small Industries Service Institute of all States / Union Territories

the following IT related activities and IT enabled services have been directed to be

treated as industrial activities eligible for registration as Small Scale Industries: -

1. Computer Software Development (which was hitherto being registered as SSSBE – Entry 12 Annexure I of this office letter No.4(5)/2000-SSI Bd. & Policy dated 19.09.2000) and Software Services (including Computer Graphics Engineering Design), computerized design and drafting).
2. Data conversion / Data Processing (Mere data entry will not constitute an SSI activity).
3. Medical / Legal Transcription using voice / data communication links.
4. Website Design & Development
5. Call Centres using voice or data communication links.
6. Back Office processing for Banks / Insurance Companies, Airlines, etc.
7. Content Development & Animation.
8. Video film making”

48. Further, the circular issued by the Central Government, Micro, Small and Medium Enterprises Department, dated 16.11.2007 in D.O.No.2(3)/1/2007-MSME-POL clearly specifies that software development consultancy services are



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MSMEs and for all practical purposes it should be treated as manufacturing industry.

49. It is the contention of the 1st respondent that on the request made by the TNPSC on 30.03.2021 to verify the practical experience certificates uploaded by the candidates in the website of the TNPSC, on 05.04.2021, the Secretary, MSME by his letter dated 05.04.2021 had directed the Director of Industries and Commerce to verify the certificate produced by the 4th respondent. Accordingly, the officers deputed by the Head of Department had after verification of those experience certificates submitted their report and based on such report only the applications of the candidates with suitable experience were admitted for further selection process.

50. The learned counsel for the 4th respondent would submit that TCS in its business activities include software division and it is registered under the Central Government and it comes within the purview of the Factories Act, 1948. Since TCS has been complying with all the requirements contemplated under the Factories Act, 1948 and therefore, TCS is a factory for all practical purposes. The learned counsel further submitted that software development companies have been considered as factory under the ESI Act, 1948.

51. Much reliance was placed by the learned counsel for the petitioner on



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a judgement of a Division Bench of this court in the case of **Seelan Raj v. The**

Presiding Officer, I Additional Labour Court [1997 (II) CTC 317]. In that

case, the petitioner industry was admittedly carrying on business of computer data processing division and software development division and that the workmen concerned in the dispute were the employees of the computer data processing division. It was also not in dispute that the employer was not carrying on another activities which could be regarded as a manufacturing process. In that factual and legal background, the Division Bench of this court was pleased to hold as under:-

“9. The word 'factory' has been explained in Section 2(m) and while deciding whether a particular establishment is a factory or not, the meaning attributed to the words "manufacturing process" and "industrial establishment" would, be relevant. But on a plain reading of Explanation II added on December 1, 1987, it becomes abundantly clear that an electronic data processing unit, or a computer unit installed in any premises or part thereof, and such activities may amount to manufacturing process, bringing within the ambit of the word 'factory' as defined under Section 2(m) of the Factories Act, yet Explanation II grants an exemption immunity to an electronic data processing or computer unit from being brought within the



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purview of the welfare legislators namely the labour laws. Thus, an establishment solely engaged as electronic data processing unit or, computer unit, though may be a factory, yet would be exempted from the application of labour laws by virtue of Explanation II and such establishment cannot be held as a factory. The only object of bringing Explanation II. is to march in step together with industrial modernization and electronic innovation in industrial field. Computer is a recent innovation and has augmented industrial development to a great extent. By computerization, efficiency has been increased adding to the national resources available for development. The legislature still thought more scope for the use of electronics and computer, and its contribution to the national development. 'Mus, in our view, taking prior the laudable object of national prosperity legislature thought it proper to grant immunity to such units from application of welfare legislation, namely labour laws, so that such developmental projects can strengthen national growth without any hurdle or impediment. Of course, the statement of objects and reasons for bringing out the amendment, does not expressly say so, but, if read in between the lines, we derive the aforesaid scope from para 2 of the statement of objects and reasons.'"



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52. However, the Division Bench of the Madras High Court has, in para

10 of the very same judgement judgement (Seelan Raj's case), held as under:-

10. Mr. Fenn Waiter has expressed concern. that by giving the aforesaid meaning to the Explanation II, by installing electronic data processing unit or computer unit in a small part of a big industrial establishment, exemption would be claimed from the implementation of labour laws, frustrating the very object of welfare legislation. The apprehension of Mr. Fenn Waiter is misplaced, as the legislature has taken ample care while 'rafting Explanation II. Addition of is following words: "If no manufacturing process is being carried out in such premises or part thereof provides an answer to the apprehension. By incorporating these words, it is the intention of the legislature that if an establishment is solely engaged in electronic data processing or computer unit, then only the benefit of Explanation II can be claimed, but, if the electronic data processing activities or computer software processing activities are carried out along with other manufacturing process or activities, then, that establishment cannot claim the benefit and would squarely be covered by the welfare legislations, namely labour laws, and the establishment would be a factory as defined under



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Section 2(m) of the Factories Act.”

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53. In the case of **Assistant Director v. Western Outdoor Interactive** (First Appeal No.143 of 2012 dated 11.07.2012) , the Bombay High Court has held as under:-

“22. On this point, I may advert to a letter produced by Mr. Mehta which is issued by the Joint Director, ESIC, New Delhi dated 9th December, 2003, Exhibit-H, to the Regional Director where it is communicated that the Directorate General, Government of India, Ministry of Labour and Factories, Advisory Services and Labour Institutes by letters dated 9th March, 2003 and dated 22nd September, 2003 has clarified that the term "software development" falls within the meaning of "manufacturing process" under Section 2(k) of the Factories Act, 1948. I do not find any hesitation to rely on and adopt this clarification that the software development is a manufacturing process.”

54. While considering the issue of applicability of the provisions of the Employees State Insurance Act, 1948 to the employees employed in a software development service industry, the Bombay High Court in **Assistant Director v. Western Outdoor Interactive** [First Appeal No.143 of 2012 dated



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11.07.2012] had observed that computer software development falls within the definition of manufacturing process as defined in Section 2(k) of the Factories Act, 1948. The meaning of the term 'factory' for the purpose of the ESI Act is broader than the definition under the Factories Act, 1948 and thus, held that Software development is a manufacturing process and the software industries involved in creating software are factories under the ESI Act, 1948.

55. The educational qualification prescribed for direct recruitment to the post of Assistant Director is Bachelor of Engineering or Bachelor of Technology of any discipline, except Civil Engineering and Architectural Engineering and it excludes bachelor's degree in Civil and Architectural Engineering. The words "any discipline" includes B.E./B.Tech, (Computer Science). The candidates who possessed bachelor's degree in computer science engineering would naturally prefer to join IT related industries. Thus, it may not be proper to say that the practical experience obtained from IT industries should not be considered for appointment to the post of Assistant Director of Industries and Commerce (Technical).

56. The eligibility condition with respect to experience prescribed in the notification issued by the respondent-TNPSC cannot be given a narrow and literal meaning that it would apply only to the person who had obtained work experience in a factory or workshop recognized by the Central Government/State



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Government. TCS (software development industry) where the petitioner obtained experience could also be considered as factory for purpose of assessing practical experience. It is the consistent view of the Supreme Court that courts shall not ordinarily test the opinion of the experts unless their decision is totally arbitrary or unreasonable. As already discussed, when the expert body assessed the practical experience obtained by the 4th respondent in TCS and based on the verification made by the expert body the recruiting agency has found that the 4th respondent is eligible to be appointed to the post, in the light of the principle laid down by the Supreme Court in the case of **Ganpat Singh Gangaram Singh Rajput vs. Gulbarga University [(2014) 3 SCC 767]** and **Secretary, Department of Health and Family Welfare v. Anita Puri (Dr.), (1996) 6 SCC 282**, this court does not want to take a different view to hold that the opinion of the experts is incorrect, in particular when the experts considered the suitability of a candidate for a specified post after giving due consideration to all the relevant factors. Therefore, the contention of the learned counsel for the petitioner that the practical experience obtained in Software/Information Technology Industries should not be considered as practical experience obtained in the factory for considering appointment to the post does not appeal to me.

57. The other judgements relied on by the learned senior counsel for the



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petitioners on the proposition of judicial review also would be of no avail to the case of the petitioners in view of the conclusion reached at by this court.

58. Insofar as the merits is concerned, it not in dispute that the 4th respondent was positioned at serial No.14 in the ranking list. Whereas the petitioner was positioned at Serial No.15. The 4th respondent obtained adequate practical experience in a factory. The TNPSC after having taken into account the opinion of the experts on the practical experience of the candidates, considered the 4th respondent to be eligible for appointment to the post and accordingly, selected her and published the provisional list of selection. This court does not find any perversity or illegality in the selection of the 4th respondent.

59. For the foregoing discussions, this court is of the view that the 4th respondent was fully qualified with adequate practical experience for appointment to the post and she was selected on merits and, therefore, the contention of the petitioner that the 4th respondent was unqualified for the post as she did not possess practical experience cannot be countenanced. The writ petition is thus devoid of merits and the same deserves only to be dismissed.

In the result, Both the writ petitions are dismissed. No costs.



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Consequently connected MPS are closed.

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Index : yes / no
Neutral Citation : yes / no
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To

- 1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C. Nagar,
Chennai 600 003.
- 2.The Secretary to the Government,
Micro, Small & Medium Enterprises Department,
Secretariat, Chennai 600 003.
- 3.The Industries Commissioner and
Director of Industries and Commerce,
Directorate of Industries and Commerce,
Guindy, Chennai 600 032.



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N.SATHISH KUMAR.J.,

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