



W.P.No.22245 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	8/12/2023
Pronounced on	22/12/2023

C O R A M

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.22245 of 2015

a n d

M.P.No.2 of 2015

V. Uma Maheswari

...

Petitioner

Vs

The Deputy Secretary
Tamil Nadu Public Service Commission
VOC Nagar, Park Town
Chennai 600 003.

...

Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of certiorarified mandamus to call for the records relating to the rejection letter vide Memo No.4615/ED.A3/2010 dated 24/5/2013 on the file of the respondent and quash the same and consequently, direct the respondent to validate the petitioner's answer sheet written by the petitioner in Register No.00204096 held on 17/2/2008 for Special Examination conducted by the Tamil Nadu Public Service



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Commission and publish the result as per her rank and allot and confirm the service of the petitioner for permanent appointment.

For Petitioner ... Mr.U.Karunakran

For respondent ... MR.Bharanidaran

ORDER

The petitioner has filed the instant writ petition to quash the rejection letter dated 24/5/2013 issued by the respondent and consequently, direct the respondent to validate the petitioner's answer sheet written by the petitioner with Register No.00204096 in the Special Examination conducted by the Tamil Nadu Public Service Commission on 17/2/2008 and publish the result as per her rank and allot and confirm the service of the petitioner for permanent appointment.

2. Facts that are necessary for the disposal of this writ petition are as follows:-

The petitioner joined the Government service on contract basis along with many others. When the Central employees in the State went on



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indefinite strike during the year 2004, demanding regularisation of their services. The Government has taken a decision to conduct a Special Competitive Examination through Tamil Nadu Public Services Commission only to those candidates who have been working temporarily during relevant period. Accordingly, competitive test has been conducted by the respondent Tamil Nadu Public Services Commission and all the persons who were qualified were appointed on regular basis.

3. The petitioner who is a contract employee has also attended the examination conducted by Public Service Commission. However, instead of encircling and filling the OMR sheet with ball point pen, as instructed, has encircled it with a pencil, thereby, OMR answer sheet of the petitioner was rejected for evaluation, thereby, she lost the opportunity.

4. Heard Mr.U.Karunakaran, learned counsel for the petitioner and Mr.R.Bharanidaran, learned counsel for the respondent.

5. The learned counsel appearing for the petitioner submitted that except the petitioner, all other Central employees were regularised and the petitioner is seeking a direction to the respondent to validate the rejected



answer sheet keeping in view of the fact that she has been working since 2004 on a temporary basis on a consolidated payment. The learned counsel appearing for the respondent has submitted that the respondent has conducted a special competitive examination for all those who have recruited during the strike of State Government employees and not all the persons who have qualified in the examination were absorbed into various categories.

6. The learned counsel appearing for the respondent has cited the judgment of the Hon'ble Apex Court in ***STATE OF TAMIL NADU AND OTHERS Vs. G.HEMALATHAA AND ANOTHER, reported in 2020 (19) SCC – 430***, in respect of instructions of Public Service Commission at the time of examination. At paragraph 8, it has been held thus:-

“We have given our anxious consideration to the submissions made by the learned Senior Counsel for the respondent. The transactions 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



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importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission.”

(ii). In another decision of the Hon'ble Supreme Court of India in ***BEDANGA TALUKDAR Vs. SAIFUDAULLAH KHAN AND OTHERS,*** reported in 2011 (12) SCC – 85, at paragraph 29, it has been observed thus:-

“28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with [Article 14](#) of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when



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a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.”



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(iii). Respondent counsel has also cited a decision of a Hon'ble Division Bench of this Court, decided in ***W.P.No.30309 of 2023, dated 31/10/2023, B. AJITH KUMAR Vs. 1. THE REGISTRAR GENERAL, HIGH COURT OF MADRAS, CHENNAI AND ANOTHER.*** Paragraph 15, is reproduced hereunder:-

“Mr.B.Vijay, learned Standing Counsel for the High Court drew the attention of this Court to the judgment of the Supreme Court in UNION OF INDIA Vs. MAHENDRA SINGH (C.A.No.4807 of 2022). A reading of the same would make it clear that filling up of the application and also attempting of the answer sheet have to be done in the manner so prescribed. It has further been held in the said judgment that even if the mistake in the filling up of the OMR answer sheet has crept into due to inadvertence, the candidature of the applicant should be rejected.”

7. According to the respondent, examination was conducted for three



papers of 100 marks each and in order to qualify, one should get 90 marks out of 300. It is submitted that in order to avoid the possibility of tampering the answer sheet and not to indulge in mal practice, clear instructions were given in the Notification in the examination paper and also on the answer sheet that OMR sheet has to be filled with ball point pen and not with pencil.

8. Learned counsel appearing for the respondent submitted that Courts cannot go beyond the instructions given in the examination in respect of filling of OMR sheet and thereby, the petitioner's case cannot be considered.

9. Learned counsel for the petitioner on the other hand, while quoting the judgment of this High Court in W.P.No.27900 of 2018, etc., batch **(1. A. VIJAYAN AND 4 OTHERS Vs. 1. THE STATE OF TAMIL NADU, rep. BY ITS CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT OF TAMIL NADU, FORT ST. GEORGE, CHENNAI 600 009 AND ANOTHER)**, submitted that the authority submitted by the respondent counsel can be distinguished basing on the facts of this case are concerned, as in the case on hand, it is a limited competitive examination but the facts in the authorities cited by the counsel for the respondent was for a general



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competitive examination.

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10. Even though the respondent has conducted special competitive examination only in respect of the employees, who are working on contract basis still every person who attempts the examination is not by default eligible. In order to make a person who appeared for the examination eligible to be absorbed one should get 30 marks each in three papers which comes to 90 marks out of 300. Therefore, the petitioner cannot say that the examination was conducted formally and who ever appears was absorbed, thereby, in circling OMR sheet with pencil instead of a ball point pen does not make any difference.

11. Initially, Government has Notified 4103 vacancies under various categories for which 11,055 candidates appeared. Out of 11,055 candidates appeared for examination, 10,929 candidates were considered eligible that means, along with the petitioner, there are few others who have become ineligible for various reasons. Therefore, this also clarifies that mere attempting the examination is not a passport to get absorption.

12. In view of the above, writ petition is dismissed. No costs.



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Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No

NCC: Yes/No

Dr.D.NAGARJUN,J



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Pre-delivery order made in
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