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W.P.No.15645 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.15645 of 2023
&W.M.P.Nos.15138 and 15139 of 2023

Ammasi

.. Petitioner

Vs.

1. The Chairman

Tamil Nadu Public Service Commissioner (TNPSC)
TNPSC Road
Park Town
Chennai – 600 003

2. The Controller of Examination

Tamil Nadu Public Service Commissioner (TNPSC)
TNPSC Road
Park Town
Chennai – 600 003

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents to include the name of the petitioner in the ongoing Physical Certificate Verification process for the post of “Field Surveyor” within the Ex-Service Man Category (ESM) as per the Notification No.18/2022 dated 29.07.2022 and Notification No.18A/2023 dated 14.02.2023 issued by the respondents on the basis of the petitioner representation dated 02.03.2023.

For Petitioner : Ms.S.Kiruthika
For Respondents : Mr.R.Bharandharan
Standing Counsel



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ORDER

In response to the notification calling applications to the post of Field Surveyor, pursuant to Notification No.18 of 2022 dated 29.07.2022 and Notification No.18A/2023 dated 14.02.2023, petitioner had made an online application on 29.07.2022 under Ex-Service Man category.

2. According to the petitioner, he had annexed and uploaded a) 10th Mark Sheet; b) 12th Mark Sheet; c) Community Certificate, d) Ex-serviceman Certificate/Graduation Certificate and e) Army Surveyor Trade Certificate. The petitioner was permitted to participate in the written examination which was scheduled on 06.11.2022 and had secured 207.50 marks out of 450 and ranked at No.28 in the category of Ex-Service Man. In spite of his marks and ranking in the category, his name was not included in the provisional list of selected candidates. The petitioner's representations seeking for clarification of his non-selection were also not responded by the respondents, which prompted him to file the present writ petition.

3. When the writ petition came up for admission on 18.05.2023, learned Senior counsel for respondent had submitted that the petitioner had not uploaded certain documents owing to which his name



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was not included in the provisional list of successful candidates. Taking note of the fact that the petitioner was already in possession of the documents, which he had failed to upload, this Court passed the interim order, which reads as follows:

“Mr.I Abrar Mohammed Abdullah, learned Standing Counsel takes notice for the respondents.

2. *A direction is issued to the respondents to examine the documents submitted by the petitioner herein, particularly, pension payment order and the bona fide certificate indicating that the petitioner was actually an Ex-Serviceman.*

3. *It is submitted by the learned counsel for the petitioner that those documents had actually been uploaded while applying for the post of Field Surveyor when called for by the respondents.*

4. *Learned Standing Counsel for the respondents, however, stated that those documents were not uploaded.*



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5. *This is an issue on fact. However, the other fact is that, on merits, the petitioner had been ranked at No.28 out of 66 posts under Ex-Servicemen Category. He had not been given posting only on the ground that the aforesaid two documents were not available with the respondents. Those documents are available in the typed set filed along with the writ petition.*

6. *A direction is therefore given that the respondents may consider those documents and if the petitioner is otherwise eligible, consider his representation to be accommodated as a Field Surveyor.*

7. *Let a report be filed by the respondents regarding this particular aspect. List the writ petition once again on 14.06.2023.”*

4. Thereafter, when the writ petition was listed on 14.06.2023, I had recorded the submission of respondent that the petitioner has been provisionally selected to the post of Draughtsman, Survey and Settlement Wing, Thanjavur subject to the outcome of the writ petition. Though an appointment has already been made in favour of the petitioner, the same is yet to be served on the petitioner.

5. The learned Standing Counsel for the respondent submitted that as per the general instructions in the notification, the applicants were directed to read all information/instructions/guidelines. The following



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warning were given to the respondents:

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“Applicants are directed to read all the information/instructions/guidelines given in this notification and the Commission's “Instructions to applicants” before applying for this recruitment. Clarification if nay required may be obtained over phone and e-mail well ahead of the last date for submission of online application. Candidates should follow the instructions given in the online application also.”

6. He further submitted that under 14(O) of the Instructions to Candidates, every candidate who applies under the Ex-serviceman category, is required to submit a Bonafide Certificate obtained in a Format given therein or Pension Payment Order. Failure to upload or produce the certificate would result in rejecting of candidature after due process. By placing reliance on these standing instructions, learned Standing Counsel submitted that the petitioner had failed to upload either the Bonafide Certificate or Pension Payment Order/Discharge Book in support of his Ex-serviceman claim. In view of the failure to upload these mandatory documents, the Commission had rightly rejected his candidature in accordance with the instructions given to the candidates in the notification. In support of such a claim, learned Standing Counsel placing reliance on decisions of the Hon'ble Supreme Court in the case of ***Bedanga Talukdar Vs. Saifudaullah Khan and Others*** reported in



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(2011) 12 SCC 85 as well as *State of Tamil Nadu and Others Vs.*

G.Hemalatha and another reported in (2020) 19 SCC 430.

7. It is no doubt true that when the mandatory conditions in the Instructions to Candidates of the notification are violated, the Respondent Commission will be well within its powers to reject the candidature of a candidate. However, when certain minor infractions have been committed by a candidate, Hon'ble Supreme Court in several of its decisions has come to the rescue of such candidates, by holding that these minor errors should not deprive of a candidate's valuable right to seek for public employment.

8. In the case of *Charles K. Skaria Vs. Dr.C.Mathew* reported in 1980 (2) SCC 752 which was subsequently followed in *Dolly Chhanda Vs. Chairman, JEE and others* reported in 2005 (9) SCC 779, Hon'ble Supreme Court had held that every infraction of the rule need not necessarily result in rejection of candidature. Likewise, these decisions were followed by me in another judgement in *Mageshwari* case [*M.Mageshwari Vs. The Member Secretary, Tamil Nadu Public Service Commission, Chennai, W.PNo.4397 of 2020, order dated 22.09.2021*], wherein I had condoned the minor mistake committed by a



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candidate in mentioning the Gender as "Male" instead of "Female" and had directed for issuance of provisional appointment order to the concerned Department. Relevant portion of **Mageshwari**'s case reads as follows:

'4. The Hon-ble Supreme Court in the case of Dolly Chhanda Vs. Chairman, JEE and others reported in 2005 (9) SCC 779, had held that every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

5. A learned Single Judge of this Court in the case of K.Ganapathy Vs. Member Secretary, TNPSC, Chennai passed in W.P.No.9289 of 2020, dated 05.02.2001, had also held that a minor error inadvertently committed by a candidate, should not deprive his valuable right of gaining employment in Public Service. The same view was reiterated in the case of M.Abiramadevi V. The Secretary, TNPSC, Chennai and another passed in W.P.No.4700 of 2020 dated 05.02.2021.

6. In the present case, the petitioner is otherwise qualified to be appointed in the selection process but for the minor mistake committed by her in the application. By applying the ratio held in the above cited decisions, it could be held that such a minor error of mentioning "Male" instead of "Female" as petitioner's gender, should not deprive her of the appointment in the Public Service. This Court has also taken note of the fact that the petitioner herein has already been provisionally appointed as Junior Assistant in the School Education



Department with a rider that the appointment would be subject to the outcome of the present Writ Petition.

7. For all the foregoing reasons, there shall be a direction to the respondent herein to ratify the provisional appointment given to the petitioner as a Junior Assistant in the School Education Department, within a period of two weeks from the date of receipt of a copy of the order of this Court. The Writ Petition stands allowed accordingly.'

9. In all the aforesaid decisions, the minor mistakes or failure on the part of the candidates to upload certain documents were condoned by the Hon'ble Supreme Court as well as this Court and candidates were also given an opportunity to participate in the further selection process.

10. Insofar as the decisions relied upon by the learned counsel for the respondent in ***Bedanga Talukdar*** case (supra) is concerned, the facts involved in that case is that the candidate therein had applied for a post in the Combined Competitive Examination under the Disability quota. As per the notification issued therein, the candidates claiming preference under the Disability Quota was required to make an application along with the supporting documents from the Office of the concerned Commission or in the alternative, to produce such a Disability Certificate in the Examination Hall, before the commencement of the



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preliminary examination. The candidate before the Hon'ble Supreme Court had neither uploaded the certificate along with the application, nor had produced it in the examination hall prior to the preliminary examination. In this background, the Recruiting Agency had treated the candidate as a general candidate and had thus disqualified him. For the purpose of consideration of his candidature under the Disability Quota, there was not a single document before the Recruiting Agency to treat the candidate as a disabled person and had therefore rightly brought him under the general category. This is not an minor infraction of failing to adhere to the instructions to the candidates and therefore, the Hon'ble Supreme Court had also observed that the failure to follow the mandatory conditions in Instructions to Candidates would be fatal.

11. Likewise in ***G.Hemalatha's case*** supra also, the infraction pointed out was that the candidate had underlined the answer sheet with pencil at several places in one of the papers in the written examination. This is a serious violation may be construed as an indicator to the paper evaluator of the candidate's identity. Furthermore, tampering the answer sheets is impermissible and against the instructions given to the candidates in the notification.

12. It is in the background of these serious violations that the



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Hon'ble Supreme Court had observed that such infractions of the instructions, would not enure to the benefit of the candidate. However, in all the other decisions cited by me earlier, the Hon'ble Supreme Court had taken into account of certain minor infirmities committed by a candidate, like failure to upload a certificate which was already in his/her possession and by condoning such an inadvertent mistake, had given an opportunity to the candidate to participate in the further selection process.

13. In the instant case, the petitioner had uploaded five certificates along with his application, which also included his Ex-service man certificate / graduation certificate. There was atleast one document before the respondents evidencing that the petitioner was an Ex-serviceman. However, the requirement in the Instructions to Candidates for uploading the Bonafide Certificate or Pension Payment Order in the given format was not complied with by the petitioner, which in my view, is only a minor infraction. Taking note of the fact that pending the writ petition, the petitioner had produced even these documents before the respondent and by accepting the same, he had also been provisionally selected and his name has been included in the provisional list of successful candidates, this Court is of the view that the minor error of not uploading certain documents, can be condoned. However, since this



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court does not strictly find fault with the original rejection made by the TNPSC, the present order would not act as a precedent to any other candidate in similar circumstances.

14. In the result, the writ petition is allowed and respondents are directed to include the name of the petitioner in the ongoing Physical Certificate Verification process for the post of “Field Surveyor” under the Ex-Service Man Category (ESM) within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

22.11.2023

Index: yes

Internet:yes

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To

Vs.

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M.S.RAMESH, J.,

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