



W.P.No.21709 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.21709 of 2022
and W.M.P.No.20727 of 2022

Mohamed Ali. B.

... Petitioner

Vs.

1.The Tamil Nadu Construction Workers Welfare Board,
Rep. by the Secretary,
No.8, Valluvar Kottam High Road,
Nungambakkam,
Chennai – 600 034.

2.The Tamil Nadu Construction Workers Welfare Board,
Rep. by its Chairman,
No.8, Valluvar Kottam High Road,
Nungambakkam,
Chennai – 600 034.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to issue appointment order for the post of Data Entry Operator to the petitioner, after receiving the computer training certificate, by considering his representation dated 01.09.2021.



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For Petitioner : Ms.M. Adhishree
for Mr.N. Manokaran

For Respondents : Mr.G. Jaisivamaraj

ORDER

Heard Ms.M. Adhishree, learned counsel for the petitioner, as well as Mr.G. Jaisivamaraj, learned counsel appearing for the respondents.

2. The first respondent had issued a Notification in Circular No.2/2018 dated 17.10.2018, inviting applications for 111 posts of Data Entry Operator. The qualifications prescribed for the said post are 10th standard; Degree or certificate course in computers; typing skill in computer as well as typewriter @ 8000 characters per hour.

3. The written examination for the selection process was held on 17.11.2019. Thereafter, the petitioner had also participated in the Computer examination held on 30.11.2019. Through a letter dated 07.01.2020, the first respondent had called the petitioner to appear for certificate verification and personal interview on 18.01.2020. According to the



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petitioner, he had attended the interview and had also produced all the original certificates on 18.01.2020, together with the certificate of Diploma in Computer Application. On 29.01.2020, when the first respondent had cancelled the earlier Notification dated 17.10.2018, the same came to be challenged by many of the candidates, including the petitioner herein, in WP.No.10667 of 2020 and by an order dated 24.11.2020, the subsequent Notification was set aside. The appeals filed by the respondents before the Division Bench, including the Writ Petition filed against the petitioner herein, were also dismissed and directions were issued to the respondents to issue appointment orders to the successful candidates, within a period of two weeks. As against the same, Special Leave Appeals were preferred and the same were also rejected. In this background, when the respondents had failed to issue the appointment order to the petitioner for the post of Data Entry Operator, the present Writ Petition has been filed.

4. Ms.M. Adhishree, learned counsel for the petitioner submitted that the only reason assigned by the respondents is that the petitioner has not produced the certificate of Computer Application, whereas he had actually produced it when he had appeared for the certificate verification on



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18.01.2020 and therefore, their claim is false.

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5. Per contra, the learned counsel for the respondents placed reliance on the typed set of papers filed by them and submitted that in Column 13 of the application made by the petitioner, which requires filling up of the Computer Education, he had left it blank and the certificate verification form also has an endorsement that the petitioner has failed to produce his computer certificate. In view of the same, he submitted that the petitioner does not deserve the appointment order.

6. As stated above, this is the second round of litigation. Earlier, when the original Notification was cancelled and a fresh Notification was sought to be given, the petitioner had already undergone the pre-selection process of having passed in the written examination, appeared in the personal interview and was also subjected to certificate verification.

7. It is the claim of the petitioner that he was indeed qualified in Diploma in Computer Application, for which he had obtained a certificate on 29.04.2018. The diploma course was a three months course conducted



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between 10.01.2018 and 19.04.2018. The certificate, which has been produced before this Court, states that he has successfully completed the course and has been awarded A+ Grade by M/s.Anjali Computer Education.

8. When the earlier Writ Petition filed by the petitioner was ordered, there is absolutely no reference to the stand now taken by the respondents with regard to failure on the part of the petitioner to produce the computer certificate. On the other hand, before the learned Single Judge, in the order passed in WP.No.10667 of 2020 dated 24.11.2020, it has been observed that the petitioner had come out successfully in the written examination and was called for interview and certificate verification. Assuming that the petitioner had failed to produce the certificate at the time of his verification, the respondents ought to have brought it to the notice of the Court about the same as a disqualification for the appointment. No such reference has been made in the order passed by the learned Single Judge. Likewise, there is no reference in the order of the Division Bench also. When such a ground was already available, which the respondents had failed to take during the first round of litigation, it is now not open to them to come out



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with a new fact.

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9. This apart, I have taken note of the fact that the Notification was issued on 17.10.2018 and the petitioner was already in possession of the required essential qualification of Diploma in Computer Application Certificate dated 29.04.2018. It is nobody's case that the petitioner had passed the certificate course after the date of Notification. Even assuming that the stand taken by the respondents is acceptable, it can be only deemed as a minor discrepancy.

10. In the case of *'Nelaparnisha Vs. Tamil Nadu Public Service Commission'* passed in *WP.(MD).Nos.13825 & 5981 of 2020 dated 07.07.2021*, I had dealt with a similar situation where a candidate in a Public Service Recruitment Process had failed to upload the supporting technical educational certificate which he was already in possession of and held it to be a 'minor flaw' which could be condoned. For such a ratio, I had also placed reliance on a few decisions of the Hon'ble Supreme Court of India. The relevant portion of the order reads as follows:-

..... “4. It is not in dispute that, had the petitioner



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uploaded her Typewriting Tamil Senior Grade Certificate in time, her candidature would not have been rejected since she is otherwise qualified to be included in the selected list of candidates. A mere failure to upload the supporting certificate, cannot be treated as a 'major flaw' in order to deprive a candidate's rightful claim for appointment, when the petitioner possesses the required Typewriting Tamil Senior Grade Certificate and has only allegedly failed to upload the certificate at the required time, such an infirmity can be construed as a minor flaw.

*5. The Hon'ble Supreme Court in the case of **Charles K.Skaria & Others V. Dr.C.Mathew & Others** reported in **1980 (2) SCC 752 at paragraph 23**, had held that a method of convenience for proving possession of a qualification is merely directory. The Hon'ble Supreme Court in that case, had ratified the decision of the Selection Committee in giving credit for the diplomas of the candidates, although the authentic copies of the diplomas were not attached to the application for admission.*

6. This proposition was again reiterated by the



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*Hon'ble Supreme Court in the Appeal (Civil) No.6506 of 2004 dated 05.10.2004 arising in the case of **Dolly Chhanda Vs. The Chairman, JEE & Others**. By applying this ratio for the present case in hand, it could be said that when all other documents were uploaded by the candidate, non uploading of the required Typewriting Tamil Senior Grade Certificate in the application may not be fatal.*

*7. Furthermore, the commission of this mistake can be treated as a minor mistake. A learned Single Judge of this Court had an occasion to deal with a similar minor error made by a candidate and had invoked the powers under Article 226 of the Constitution of India in the case of **M.Abiramadevi Vs. The Secretary, TNPSC, Chennai & another in W.P.No.4700 of 2020** and passed orders in favour of the candidate therein. The relevant portion of the order reads as follows:-*

“10. In view of the above positive development, this Court is not inclined to go into the contentious position adopted by the respondent Commission. No doubt, the Commission is under legal obligation to insist on the compliance of all candidates to every requirement which was part of the notification. Nevertheless, in the case of this nature, when



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extremely minor error has been committed inadvertently by the candidate concerned, the same cannot be allowed to deprive the candidate of her valuable right to gain employment in Public Service. After all, the saying is “To err is human” and such inadvertent mistake committed by the candidate viz., the petitioner, cannot be visited with a punishment of being denied of a life time opportunity of gaining employment in Public Service. In this case, the petitioner, having been provisionally selected for appointment and if this Court were to accept the objections of the Commission, in the face of the positive development, it would only result in grave injustice to the petitioner, as she has rightly earned her place for provisional appointment on the basis of her performance and hard work.”

8. By taking into account the ratio held by the Hon'ble Supreme Court in the cases of Charles K. Skaria (supra) and Dolly Chhanda (supra), as well as the decision of this Court in Abiramadevi's case (supra), the failure on the part of the petitioner to upload the required Typewriting Tamil Senior Grade Certificate, should not deprive her of the selection. Consequently, the impugned order of rejection requires to be interfered with and thereby facilitate the candidature of the petitioner to be included in the selection list.”



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11. Now that it is shown that the petitioner was in possession of the certificate, even prior to the date of Notification and that the respondents, for the first time in this Writ Petition, have taken a stand that the petitioner has not produced the certificate during the verification, I am of the view that the petitioner may be directed to produce the certificates before the respondents for the purpose of obtaining an appointment order. I would hasten to add here that it is not in dispute that the petitioner had otherwise come out successful in the written examination and other selection processes. While that being so, there cannot be any impediment for the respondents to issue the required appointment order.

12. During the pendency of this Writ Petition, an interim order came to be passed on 21.06.2023, whereby, the respondents were directed to keep one post of Data Entry Operator vacant, till the final disposal of the Writ Petition. Thus, in view of the said interim order, the petitioner, as well as the other candidates, can always be accommodated in the vacant post.



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13. For all the foregoing reasons, there shall be a direction to the respondents to issue an order of appointment to the petitioner, appointing him to the post of Data Entry Operator, together with the required posting order. Such an order shall be passed at least within a period of one (1) week from the date of receipt of a copy of this order.

14. In the result, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2023

Index:Yes
Speaking order

Sni

To

1.The Secretary,
Tamil Nadu Construction Workers Welfare Board,
No.8, Valluvar Kottam High Road,
Nungambakkam,
Chennai – 600 034.

2.The Chairman,
Tamil Nadu Construction Workers Welfare Board,
No.8, Valluvar Kottam High Road,



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Nungambakkam,
Chennai – 600 034.



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M.S.RAMESH,J.

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