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W.A.No.3768 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.A.No.3768 of 2019 and
C.M.P.No.23846 of 2019

The Chairman,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Park Town,
Chennai – 600 003.

... Appellant

Vs.

P.Karthik

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 23.07.2019 in W.P.No.31759 of 2018.

For Appellant : Mrs.G.Hema

For Respondent : Mr.I.Jayasingh Manoharan

JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This appeal has been directed against the order passed by the Writ Court dated 23.07.2019 made in W.P.No.31759 of 2018.



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2. The necessary facts leading to filing of this appeal reads thus:

(i) The appellant Tamil Nadu Public Service Commission invited applications from eligible candidates for Combined Civil Services Examination 4 (Group-IV) vide Notification No.23/2017 dated 14.11.2017. The last date for submission of application was fixed as 13.12.2017 and written examination was scheduled to be conducted on 11.02.2018.

(ii) The respondent/petitioner being a M.C.A. Graduate had also applied for the said service i.e. Group-IV Examinations and he also written the examination on 11.02.2018. The said application was made by the respondent/writ petitioner to the appellant TNPSC through online as per the Notification where all the relevant particulars sought for by the Service Commission had been filled up and such online application was uploaded.

(iii) In the online application, his date of birth as claimed by him was filled in as 27.09.1989.



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(iv) After the written examination was over, results were published and in respect of the provisionally selected candidates on screen certification verification was called for. For such purpose, necessary documents have to be uploaded by the candidates between 30.08.2018 and 18.09.2018.

(v) Accordingly, on 07.09.2018 the respondent/writ petitioner had uploaded the necessary documents through online.

(vi) Thereafter the verification process went on where it was found by the appellant TNPSC that, though the respondent/petitioner claimed his date of birth in the application as 27.09.1989, in the certificate produced in this regard, his date of birth since has been mentioned as 27.03.1989, the claim made by the respondent/petitioner with regard to his age and date of birth since was found to be wrong, his application by invoking clause 12 (M) of the instructions was rejected.

(vii) Only at that stage, the respondent/writ petitioner had filed the said writ petition seeking for a writ of mandamus directing the TNPSC to include the name of the writ petitioner also in the list of candidates



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published on 26.11.2018 calling the candidates for original certificate verification and counselling which was scheduled to be commenced from 03.12.2018.

(viii) During the pendency of the writ petition, an interim order was granted, pursuant to the interim order, the candidate's certificate was verified.

(ix) Thereafter ultimately the writ petition was taken up for final hearing and disposed by the learned Judge on 23.07.2019 where the learned Judge took the view that, even though clause 12(M) of the instructions are available in the Notification, however the claim made by the petitioner in the application submitted online on his date of birth as 27.09.1989 is an erroneous claim or erroneous particulars given in the online application but his original date of birth is 27.03.1989 and in support of which, the document has been filed and moreover, he has secured higher marks, therefore definitely he would have been selected, hence the learned Judge was of the view that, such an error committed by the candidate i.e., the respondent/writ petitioner cannot be taken as a reason for rejecting the application outrightly by invoking clause 12(M)



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of the instructions and accordingly the learned Judge allowed the said writ petition by order dated 23.07.2019 which is impugned herein.

3. Questioning the said decision taken by the learned Judge in the impugned order, Mrs.G.Hema, learned Standing Counsel appearing for the appellant TNPSC would contend that, insofar as the conditions imposed by the appellant TNPSC in its instructions to candidates, at the time of notification even thereafter are binding both the TNPSC as well as the candidates who made applications.

4. As declared by the Courts, such kind of instructions given by the Service Commission will have a force of law and it must be strictly followed.

5. When that being the position, according to the learned Standing Counsel for the appellant, the entry that has been made wrongly in the online application even though was given time to rectify, the same has not been rectified by the respondent/writ petitioner, therefore at the time of filing the documents only when it was verified by the TNPSC and found that, it was a wrong claim made by the respondent/writ petitioner, his



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candidature was rejected that too in consonance with clause 12(M) of the instructions given in the Notification.

6. In this context, the learned Standing Counsel would rely upon various judgments including the Division Bench judgment of this Court in ***Dr.M.Vennila Vs. Tamil Nadu Public Service Commission represented by Deputy Secretary, Government Estate, Anna Salai, Chennai*** made in W.P.No.32383 of 2005 etc. batch reported in ***2006 (3) CTC 449*** and also the judgment of the Hon'ble Supreme Court in ***The State of Tamil Nadu and others Vs. G.Hemalathaa and another in Civil Appeal No.6669 of 2019 arising out of SLP(C) No.14093 of 2019.***

7. Per contra, Mr.I.Jayasingh Manoharan, learned counsel appearing for the respondent/writ petitioner would contend that, insofar as the wrong entry made in the online application with regard to the date of birth of the candidate i.e. the respondent/writ petitioner is concerned, it is only an error, this was not noticed immediately by the writ petitioner and subsequently at the time of filing the certificates, he realised that it has been mistakenly uploaded, immediately he had sent a letter to the



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TNPSC and thereafter since the name of the writ petitioner was not found in the selection list, he was constrained to approach this Court by filing the said writ petition.

8. He would also submit that, the date of birth made in the application is “27.09.1989” and in the original certificate it is “27.03.1989”, therefore instead of the month '3' it has been wrongly mentioned as '9', this is purely an error that has been inadvertently crept in at the time of making the online application.

9. By virtue of this wrong entry in the date of birth no advantage was claimed by the respondent/writ petitioner and whether it is 27.09.1989 or 27.03.1989, it does not make any difference with regard to the merits of the candidate, therefore based on such a wrong entry the very candidature itself of the respondent/writ petitioner ought not to have been rejected.

10. In this context, according to the learned counsel appearing for the respondent/writ petitioner, Courts have taken view by extending the relief to this kind of candidates sympathetically provided if they are



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meritorious and would have been selected otherwise.

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11. In this context, the learned counsel has relied upon the following decisions:

- (i) Ajay Kumar Mishra Vs. Union of India and others (Delhi High Court) dated 23.12.2016;
- (ii) Haryana Staff Selection Commission through its Secretary Vs. Sarla and others (Punjab & Haryana) in Letters Patent Appeal No.320 of 2019 dated 22.02.2019;
- (iii) Sheetal Katoch Vs. State of H.P. & others in CWP.No.3331 of 2019 dated 29.10.2020; and
- (iv) W.A.Nos.1354 and 1356 of 2019 dated 11.07.2019 in the matter of The Secretary, Tamil Nadu Public Service Commission, TNPSC Road, Park Town, Chennai – 600 003 Vs. D.Ashok Kumar and J.Prema

12. We have heard the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

13. It is an admitted fact on the part of the respondent/writ petitioner that, he made an entry with regard to the date of birth of the



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online application only as 27.09.1989.

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14. The same could have been rectified for which a second chance also was given by the TNPSC upto 10.01.2018, however before the date since the respondent/writ petitioner did not notice his mistake, he had not come forward to rectify the same.

15. Therefore, on facts the entry that has been made in the online application is 27.09.1989 and in the certificate it is 27.03.1989 which was not rectified either at the time of making the application or even in the extended time upto 10.01.2018.

16. This could be noticed by the TNPSC only at the time of verification of the certificates which was uploaded between 30.08.2018 and 18.09.2018.

17. In the case in hand, only on 07.09.2018 these certificates were uploaded, therefore only thereafter the TNPSC could have noticed this difference of two claims made with regard to the date of birth. Then only the TNPSC decided to invoke clause 12(M) of the instructions which



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reads thus:

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“M) Incomplete applications and application containing wrong claims or incorrect particulars relating to category of Reservation/Other basic qualification/eligibility wise/ Age/communal categories/educational qualification and other basic eligibility criteria will be liable for rejection.”

18. It is also to be noted that, further instructions also available in Note - IV and V under the caption 'How to apply through online' of the “Instructions to applicants” where the clause V reads thus:

“V. There is a provision to modify the submitted online application. Applicants are requested to make use of this facility to correct their details in the online application, if any. This modification facility will be available up to the last date for applying online for the particular post. After this last date, no modification will be permitted. Applicants should take utmost care while filling in the online application. Certain fields are fixed and cannot be edited. Applicants are hence requested to fill in the online application form with utmost care as no correspondence regarding change of details will be entertained. TNPSC will not be responsible for any consequences arising out of furnishing of incorrect and



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incomplete details in the application or omission to provide the required details in the application form.”

19. It is also to be noted that, a declaration also had been made by candidates including the respondent/writ petitioner to the following effect.

“I hereby declare that all the particulars furnished in this application are true, correct and complete to the best of my knowledge and belief. In the event of any information being found false or incorrect or ineligibility being detected before or after the examination or at any stage, any action can be taken against me by the TNPSC including rejection of the my application.”

20. If we look at combinedly these instructions i.e. 12(M) and Note clause V as well as the undertaking given by the candidate, these materials make abundantly clear that, any incomplete applications and application containing wrong claims or incorrect particulars relating to the following categories viz., Reservation, Basic Qualification, Eligibility, Age, Communal categories and Educational qualification would be summarily rejected or liable to be rejected.

21. In this context, whether the notification of the said provisions



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of the instructions can be approved or not is the question. That is no more *res integra* because of plethora of judgments which had come where it has been declared already that, the instructions issued by the Service Commission would have a force of law and therefore it should be strictly followed. Those who did not follow such instructions given by the Service Commission cannot claim any equity and this has also been made clear in more than one judicial orders.

22. However, Mr.I.Jayasingh Manoharan, learned counsel appearing for the respondent has heavily relied upon the judgments which have been quoted herein above. The judgment of the Delhi High Court in the *Ajay Kumar Mishra* is concerned, the Division Bench of the Delhi High Court has observed that, the petitioner in that case did not derive any advantage by entering the wrong date of birth in his online application. It has been further held that, there is a difference between a mere inadvertent error and misrepresentation or suppression. There could be no intentional misrepresentation as the school certificate was submitted. The penalisation of cancellation of the candidature on the ground of a typographical error is arbitrary, unreasonable harsh and disproportionate to its gravity of the lapse. Holding so, the Delhi High



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Court has granted relief to the candidate in that case.

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23. This in fact has been followed by the Division Bench of the Himachal Pradesh High Court in the judgment cited supra, where also almost similar view has been taken.

24. If we deal with these two judgments of various Division Benches i.e., Delhi High Court as well as the Himachal Pradesh High Court are concerned, in those judgments the nature of the instructions having been declared as a force of law whether can be violated or not, despite a violation if it is noticed whether the person who should have followed such instructions would be entitled to get the relief on the equitable jurisdiction has never been discussed.

25. The next judgment cited by the learned counsel appearing for the respondent/writ petitioner is the Division Bench of the Panjab and Haryana as cited supra, where the Division Bench has found that, there was no provision on the website of the Commission allowing correction in the online application form. In these circumstances, if a mistake is committed, there being no provision for carrying out correction, even if it is noticed subsequently, a poor candidate is to suffer for no fault. This



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only influenced the Division Bench (Panjab and Haryana) to come to the conclusion to and in favour of the candidate, but here it is not the case.

The TNPSC has given second choice for rectification of these kind of mistakes and time was extended upto 10.01.2018 even during the said extended period which is the second choice, the candidate did not come forward to rectify it.

26. It is further to be noted that, TNPSC has never given any such second choice to the candidates to rectify this kind of mistakes in any of their examination or recruitment process except this Group IV as a special case because lakhs and lakhs of applications are being filled to select various posts which come under the Combined Group IV Examination which may be in thousands.

27. Hence, the Himachal Pradesh Division Bench's decision also would not apply to the facts of the present case.

28. Now let us come to a Division Bench of this Court in *Secretary, Tamil Nadu Public Service Commission, TNPSC Road, Park Town, Chennai Vs. D.Ashok Kumar and J.Prema* (cited supra), where,



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even though the relief has been given by confirming the order passed by the Writ Court with regard to the plea as to whether the conditions or instructions issued by the TNPSC will have a binding force and it will have a force of law and whether it has been complied with or not is concerned, the Division Bench also has taken the similar view, which is available in para 12 of the said judgment, which reads thus:

“12. The learned Single Judge proceeded as if the mistakes were trivial and as such, the same should be condoned. The question is not as to whether the mistake was trivial or major. It was a case of non compliance with the instruction given by the TNPSC. The candidates were required to fill up the form correctly. The candidates were also given sufficient time to rectify the mistake. In case mistakes were not rectified even within the stipulated period, it would not be possible at a later point of time either to correct the entries or to contend that the mistakes were trivial in nature. We are therefore of the view that the learned Single Judge was not correct in allowing the Writ Petitions for the reasons mentioned in the common order.”

29. Though the Division Bench has affirmed the said legal position that has already been taken, however in the concluding para they extended the relief to the candidate on sympathetic basis. This has



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become evident from the following holding that has been made by the

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Division Bench in para 21.

“21. We therefore allow the Writ appeals filed by the TNPSC holding that the mistakes in filling up the application would result in the rejection of the applications. However, we refrain from interfering with the ultimate direction given by the learned Single Judge that TNPSC shall allot posts to the respondents taking into account their provisional selection. We direct TNPSC to operate the provisional select list and appoint the respondents in the respective posts as per their eligibility. Such exercise shall be completed within a period of four weeks from the date of receipt of a copy of this judgment.”

30. Though the Division Bench has stated that, the appeal filed by the Service Commission holding that the mistakes in filling up the application would result in the rejection of the applications is to be allowed, however still the Division Bench refrain from interfering with the ultimate direction given by the learned Single Judge in extending the relief to the candidate in that case.

31. However, this kind of relief on sympathetic ground despite



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having found that the instructions have been followed strictly, whether would be made possible has also been discussed by the Hon'ble Supreme Court in the ***State of Tamil Nadu and others Vs. G.Hemalathaa and another*** (as cited supra).

32. The Hon'ble Supreme Court has discussed this issue with regard to the instructions issued by the Commission whether is mandatory or not, where, the judgment of the Division Bench of this Court in ***M.Vennila Vs. Tamil Nadu Public Service Commission*** reported in ***(2006) 3 Mad.L.J. 376*** has been affirmed. The relevant portion of the judgment of the Hon'ble Supreme Court reads thus:

“7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions 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 importance. The High Court in exercise of powers under [Article 226](#) of the Constitution cannot modify/relax the Instructions issued by the Commission. [M.Vennila V. Tamil Nadu Public Service Commission, (2006) 3 Mad. LJ 376]



8. *The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in Taherakhatoon (D) By LRs v. Salambin Mohammad (1999) 2 SCC 635 and Chandra Singh and Others v. State of Rajasthan and Another (2003) 6 SCC 545 in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.*

9. *In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said M. Vennila v. Tamil Nadu Public Service Commission, (2006) 3 Mad. LJ 376 (1999) 2 SCC 635 (2003) 6 SCC 545 that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.”*

33. In fact, the Hon'ble Supreme Court expressed its view in affirming the said legal position stating that the judgment of the High Court cannot be approved as any order in favour of the candidate who



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has violated the mandatory instructions would be laying down bad law.

WEB.COM The relevant portion of the order reads thus:

“12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.”

34. The earliest judgment of a Division Bench of this Court on this point is ***Dr.M.Vennila Vs. Tamil Nadu Public Service Commission in W.P.No.32383 of 2005*** reported in ***2006(3) CTC 449 : 2006 (3) MLJ 376*** where the Division Bench has held as follows:

“25. In the earlier part of our order, we have extracted relevant provision, viz., Instructions, etc. to Candidates as well as the Information Brochure of the Tamil Nadu Public Service Commission, we hold that the terms and conditions of Instructions, etc. to Candidates and Information Brochure have the force of law and have to be strictly complied with. We are also of the view that no modification / relaxation can be made by the Court in



exercise of powers under [Article 226](#) of the Constitution of India and application filed in violation of the Instructions, etc. to Candidates and the terms of the Information Brochure is liable to be rejected. We are also of the view that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language. As said at the beginning of our order, since similar violations are happening in the cases relating to admission of students to various courses, we have dealt with the issue exhaustively. We make it clear that the above principles are applicable not only to applications calling for employment, but also to the cases relating to the admission of students to various courses. We are constrained to make this observation to prevent avoidable prejudice to other applicants at large.”

35. This position has never been tinkered with or modified by any of the judgment and in fact the judgments of various Division Benches quoted herein above of this Court as well as the Hon'ble Supreme Court judgment quoted herein above affirmed the said view taken in *Vennila's* case by the earliest Division Bench.

36. Here also the case is whether it is a small mistake or not, error



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wantonly done due to inadvertence or not is not the matter. The only issue is whether the mandatory instructions given by the Service Commission has been strictly followed or not. Here admittedly the instructions have not been followed and if there is a violation what shall be the consequence also has been stated in the instructions especially in clause 12(M) which has already been quoted herein above.

37. Incomplete applications or application containing wrong claim or incorrect particulars regarding so many issues including the age will be liable for rejection.

38. Therefore, the invocation of clause 12(M) of the instructions cannot be said to be a wrong one and the sympathy factor cannot override the legal position which has already been settled.

39. In the words of the Hon'ble Supreme Court, if the Court after found that the instructions have not been followed still intend to extend the relief only on sympathetic ground that would amount to be laying down a bad law.



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40. Therefore if at all the plea made by the learned counsel appearing for the respondent/writ petitioner is accepted and any relief is extended as has been extended by the learned Judge in the impugned order that would amount to laying down a bad law which this bench do not want to propose.

41. In the result, the following orders are passed in this writ appeal:

The order impugned passed by the learned Judge is hereby set aside. As a sequel, this writ appeal is allowed. However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] [K.B., J.]
05.09.2023

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

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