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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.4903 of 2023
and
W.M.P.(MD)No.4589 of 2023

R.Arul Sherli

... Petitioner

Vs.

1.Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Part Town, VOC Nagar,
Chennai – 600 003.

2.The Director of Medical Education,
O/o. The Directorate of Medical Education,
156, Poonamallee High Road,
New Bupathy Nagar, Chepet,
Chennai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Memo.No.6491/RND-A2/2019 dated 31.01.2023 on the file of the Respondent No.1 and quash the same as illegal and consequently direct the respondent No.1 to accept the application of the petitioner and permit her to participate in the



Examination (Computer Based Test) for the post of Assistant Professor of
Psychology cum Clinical Psychologist in Tamil Nadu Medical Services.

For Petitioner : Mr.T.Aswin Rajasimman,
For M/s.Lajapathi Roy and Associates.

For Respondents : Mr.J.Anandkumar,
Standing Counsel for R1.
Mr.N.Satheeshkumar,
Addl. Government Pleader for R2.

* * *

ORDER

Heard the learned counsel on either side.

2.The first respondent issued Notification No.33/2022 dated 15.11.2022 inviting applications from the eligible candidates for direct recruitment to the post of Assistant Professor of Psychology-Cum-Clinical Psychologist that included in the Tamil Nadu Medical Services. It was set out therein that the applicant should possess the following or its equivalent qualification:-



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“(B) Educational Qualification (as on 15.11.2022)

Applicants should possess the following or its equivalent qualification awarded by any University or Institution recognized by the University Grants Commission for the purpose of its grant:

(I) Must possess degree of M.A. or B.A. (Hos) or B.S.C. (Hons) in Psychology or Post graduate diploma or degree in Clinical Psychology or a diploma in Clinical Psychology; and

(ii) A Post graduate in Medical and Social Psychology of the All India Institute of Mental Health, Bangalore or diploma in Medical and Social Psychology Part II of the Bangalore University or any other recognized university.”

3.TNPSC thereafter issued Notification No.33A/2022 dated 13.12.2022 notifying that the educational qualification set out in Para.5.

(B) of the earlier notification should be read as follows:-

Applicants should possess the following or its equivalent qualification awarded by any University or Institution recognized by the University Grants Commission for the purpose of its grant:



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1.	<i>(a) Must possess a Post graduate diploma in Psychology and (b) M.Phil (or) Ph.D degree in Clinical Psychology ;</i> <i>(or)</i>
2.	<i>(a) Must possess a Post graduate diploma in Psychology</i> <i>(b) a diploma in Medical Psychology or Social Psychology: and</i> <i>(c) a diploma in Clinical Psychology</i>

4.The petitioner possesses the qualification prescribed for the aforesaid post. But she acquired the said qualification after the publication of the original notification and before issuance of corrigendum. Seeking permission to apply in response to the said notification, the petitioner submitted a representation dated 06.01.2023. Since it did not elicit any response, she filed W.P.(MD)No.791 of 2023. The prayer in the writ petition was for directing TNPSC to accept the application of the petitioner and permit her to participate in the examination. The writ petition was disposed of on 12.01.2023 by directing TNPSC to consider her representation and pass appropriate order on merits and in accordance with law within a period of two weeks



from the date of receipt of the said order. The TNPSC passed an order dated 31.01.2023 rejecting the petitioner's request, since the petitioner did not possess the prescribed educational qualification as on 15.11.2022. Challenging the same, the present writ petition has been filed.

5.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and permit the petitioner to write the examination scheduled to be held on 14.03.2023.

6.Due to paucity of time, TNPSC could not file formal counter affidavit but however submitted “position note” through their learned standing counsel and the learned standing counsel took me through the averments set out therein.

7.Two fold objections were raised. The first is that the corrigendum issued by TNPSC will relate back to the original date of notification. He pointed out that inadvertently educational qualification prescribed in the relevant Recruitment Rules was not correctly mentioned in the original notification dated 15.11.2022. After the error was noticed,



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corrigendum came to be issued. The learned standing would submit that the settled legal position is that corrigendum will relate back to the original notification. Except the para relating to educational qualification, rest of the original notification had been retained as such. The second objection is that TNPSC is to hold the examination on 14.03.2023 and that it would be very difficult to make arrangements to enable the petitioner to participate in the examination at this stage.

8.He also draws my attention to the Section 20(4)(iv) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. The statutory provision is as follows:-

“(4) No person shall be eligible for appointment to any service by direct recruitment unless he satisfies the Commission in cases where the appointment has to be made in consultation with it or the appointing authority, in other cases— (i) that his character and antecedents are such as to qualify him for such service; (ii) that such a person does not have more than one wife living or if such a person is a woman, that she is not married to any person who has a wife living; (iii) that such a person satisfies the age prescribed in the special rules on the first July of the year in which the vacancy is notified; and (iv)



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that, notwithstanding anything contained in the special rules, such a person also possesses the qualifications including experience prescribed for a post, on the date of notification of the vacancy

Provided that the candidates who have written the final year degree examination shall be admitted to the preliminary examination for recruitment to the posts included in Group I Service conducted by the Commission, subject to the condition that such candidates shall produce proof of having passed the degree examination, with their application for the main written examination, failing which they will not be admitted to the main written examination.”

9.The primary question that calls for consideration is whether the notification No.33A/2022 dated 13.12.2022 can be considered as the notification in terms of Section 20(4)(iv) Tamil Nadu Act, 14 of 2016

10.The learned counsel for the petitioner draws my attention to the Rules of procedure issued by TNPSC in exercise of its function under Article 320 of the Constitution of India. Rule 7(A) is as follows:-



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“A. Advertisement:

Announce through the Commission’s website and through advertisement in any one or two of the dailies in Tamil and any one of the dailies in English, with wide circulation, and also through the Tamil Nadu Public Service Commission Bulletin, besides other mass media depending on the nature and number of posts, as the Commission may decide on each occasion:

(i) the qualifications and experience required for the post as per the rules in force;

(ii) the conditions of admission to the examination;

(iii) the standard of examination;

(iv) the number of vacancies to be filled under the General Turn and other reservation groups, where applicable;

(v) the subjects, scheme of the examination (preliminary and/or main written examination and/or oral test) and the syllabus prescribed therefor;

(vi) the pay matrix applicable to the post; and

(vii) the last date for submission of application along with the prescribed fee.

Provided that where the exact number of vacancies to be filled is not ascertainable, the Commission shall announce the approximate number of vacancies to be filled.”



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11.From a reading of the aforesaid Procedural Rule, one can safely conclude that the original notification dated 15.11.2022 will not qualify to be a proper notification because the educational qualification itself has been incorrectly set out. Paragraph No.6 of the corrigendum reads that the applicants who have applied till 14.12.2022 in the online application, with the qualification announced in the notification dated 15.11.2022 and not possessing the revised educational qualification mentioned above, would become ineligible to the said post. In other words, those persons who submitted their online application pursuant to the original notification dated 15.11.2022 based on the qualification set out therein had been rendered as ineligible, if they do not possess the educational qualification set out in the notification dated 13.12.2022. For the aforesaid two reasons, I hold that the Notification No.33A/2022 dated 13.12.2022 should be considered as the date of notification of the vacancy as contemplated in Section 20(4)(iv) of the Tamil Nadu Act 14 of 2016.

12.However, I am not in a position to straightaway direct the respondent to permit the petitioner to participate in the examination to be held on 14.03.2023. I leave it to the generosity of the first respondent to



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consider making appropriate arrangements to accommodate the petitioner some how or other by accepting her application and permitting her to write the examination. The learned counsel for the petitioner states that the petitioner would be physically present in the office of the first respondent tomorrow by 08.00 a.m. I make it clear that this Court will not entertain any contempt petition, if the first respondent is not in a position to accommodate the petitioner due to administrative constraints. But for the aforesaid two reasons, I would have definitely held that the date of corrigendum will relate back to the date of original notification.

13.The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.03.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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Note : Issue order copy on 13.03.2023 by 03.30 pm.



To:

The Director of Medical Education,
O/o. The Directorate of Medical Education,
156, Poonamallee High Road,
New Bupathy Nagar, Chepet,
Chennai.



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G.R.SWAMINATHAN,J.

ias

W.P.(MD)No.4903 of 2023

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