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W.A.No.567 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2024

DELIVERED ON: 24.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.567 of 2021
and CMP.No.2350 of 2021

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road (now TNPSC Road),
VOC Nagar, Part Town,
Chennai-3.

... Appellant

Vs.

1.The Additional Chief Secretary to Government,
Tourism, Culture and Religious Endowment Department,
Secretariat, Fort St.George, Chennai-9.

2.Mr.K.Sampath Kumar

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.12.2020 made in W.P.No.20202 of 2020.

For Appellant : Ms.G. Hema, Standing Counsel

For Respondents : Mr.M.R.Jothimanian for Mr.K.Balu for R2

Mr.P.Balathandayutham,
Special Government Pleader for R1



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JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

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The appellant commission viz., Tamil Nadu Public Service Commission is the respondent in the writ petition and aggrieved by the allowing of the writ petition filed by the respondent/writ petitioner by directing the respondent to participate in the certificate verification / counselling to be held on 29.12.2020 for the post of Assistant Tourist Officer Grade-II, has filed the instant writ appeal.

2. The case of the respondent/writ petitioner is that he applied for the post of Assistant Tourist Officer, Grade II from among 42 vacancies as per the notification issued by the appellant Commission dated 22.07.2019. The petitioner cleared the written examination and vide notification dated 23.10.2020, he was required to submit his certificates for online verification between 23.12.2020 and 05.11.2020 for selection in the shortlist for counselling/appointment. According to the respondent/writ petitioner, he was unable to comply with the uploading of document for online verification due to his sudden illness during that period and on account of demise of his



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grandmother. Therefore, due to the failure on the part of the respondent/writ petitioner to upload the documents for certificate verification, the appellant Commission did not permit the respondent to participate in the counselling, against which he has filed the writ petition.

3. The Writ Court, taking into consideration of the fact that the petitioner, being a MCA Graduate and having cleared the written examination and that he hails from a agricultural family and first graduate in his family and futher taking into account the illness and demise of his grandmother, on sympathetic consideration, has directed the petitioner to appear before the appellant Commission for Certificate Verification on 29.12.2020. Being aggrieved by the order of the Writ Court, the appellant Commission has filed the instant writ appeal.

4. The primordial submission made by the learned counsel for the appellant/Commission by drawing the attention of this Court to para 2 of the Tamil Nadu Public Service Commission Notice of Certificate Verification dated 22.10.2020 in Office Memorandum No.5080/APD-C2/2019, is that in



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the light of the mandatory nature of the said instruction, the concession, rather benevolence extended in favour of the respondent/writ petitioner, purely on mercy ground, is *per se* unsustainable and if the claim of the writ petitioner is considered, the same would deprive of the opportunity of deserving candidates and prays for setting aside the order of the writ court and allowing of the writ appeal.

5. Mr.M.R.Jothimanian, learned counsel for the second respondent / writ petitioner submitted that the Writ Court has rightly taken into consideration the economic status of the petitioner and the sudden dislocation of the second respondent's family at the time when the second respondent was required to upload his documents through online mode and passed a reasoned order and further submitted that the second respondent's rightful claim for being considered for Government employment cannot be deprived on highly technical grounds and therefore, prays for dismissal of this writ appeal. In support of his submissions, the learned counsel for the second respondent has relied upon the decisions in ***(i) Dolly Chhanda v. Chairman, JEE and Others [(2005) 9 SCC 779]*** and ***(ii) The Secretary,***



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Tamil Nadu Public Service Commission v. M.Chitra and another [2009

SCC Online MAd 3163].

6. Heard Mr.P.Balathandayutham, learned Special Government pleader for the first respondent, and perused the materials on record.

7. Admittedly, the second respondent/writ petitioner, having cleared the written examination as per the notification dated 22.07.2019 issued for the post of Assistant Tourist Officer Grade II, on account of personal convenience between 02.11.2020 and 16.11.2020, did not upload the certificates for verification through online and thereafter, the certificate verification was over and posting order alone was remained to be issued on 29.12.2020. The writ Court, on a sympathetic consideration, by a positive order, has permitted the second respondent to submit the application for scrutiny, against which the appellant/Commission has filed the instant writ appeal.



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8. The fact remains that the appellant/Commission, has issued a Notice of Certificate Verification in Office Memorandum No.5080/APD-C2/2019 dated 22.10.2020 with regard to uploading of scanned certificates for Certificate Verification Phase-II and it is relevant to extract para 2 of the said instructions:

"2.He / She is, therefore, directed to upload the scanned copy of original documents for the certificate verification phase II in support of his/her claims made in his/her online application from 26.10.2020 to 05.11.2020 through e-seva centers run by TACTV. **If he/she fails to upload any one or more of the following scanned documents in accordance with his/her claim in his/her online application, at the time of uploading scanned documents, he/she will not be admitted to further process of selection under any circumstances and his / her application is liable to be rejected.**"

9. A perusal of the aforesaid notice of certificate verification issued by the appellant Commission dated 22.10.2020 clearly shows that if the candidate fails to upload the documents, he/she will not be admitted to further process of selection under any circumstances and his/her application is liable to be rejected. While that being the clear and specific instruction



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issued to the candidates for online uploading of documents, the claim of the petitioner cannot be considered even on sympathetic considerations as the same would be in violation of the aforesaid instructions.

10. The Hon'ble Supreme Court in catena of decisions has considered deviations in terms and conditions prescribed to any public authority for recruitment to any post and held to be illegal. In ***Union Public Service Commission v. Govt. of NCT of Delhi and Others [W.P(C)No.10058/2009 dated 25.01.2010]*** the Hon'ble Supreme Court held that no deviation from the terms and conditions of an advertisement and rules for the recruitment for a public office shall be permitted, as such deviation would result in gross injustice to other candidates.

11. Strict adherence to the terms and conditions of the Instructions is of paramount importance. This Court, in exercise of powers under Article 226 of the Constitution of India, cannot modify / relax the instructions issued by the Commission, as held in the decision in ***M.Vennila v. Tamil Nadu Public Service Commission [(2006) 3 Mad LJ 376]***. The decisions



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relied on by the learned counsel for the second respondent/writ petitioner have no application to the present case on hand for the reason that the said decisions were rendered on entirely different facts and circumstances.

12. In the case on hand, the Writ Court has granted the relief to the second respondent / writ petitioner on a sympathetic consideration on humanitarian ground. In spite of finding that the second respondent/writ petitioner has failed to comply with the instructions of notice of certificate verification dated 22.10.2020, the Writ Court granted the relief, ignoring the mandatory nature of the instructions. It cannot be said that such exercise of discretion should be affirmed by us, especially when such exercise is in the teeth of the instructions, which are binding on the candidates taking the examination.

13. In the light of the specific instructions issued by the appellate Commission dated 22.10.2020 and the decisions cited supra, the claim of the petitioner is legally unsustainable and the order of the Writ Court warrants interference.



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14. Accordingly, the Writ Appeal stands allowed, setting aside the order of the Writ Court dated 28.12.2020 made in W.P.No.20202 of 2020.

No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.) (K.B. J.)
24.04.2024

Internet: Yes/No

Index : Yes/No

Jvm

To

1.The Additional Chief Secretary to Government,
Tourism, Culture and Religious Endowment Department,
Secretariat, Fort St.George, Chennai-9.



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D.KRISHNAKUMAR, J.

and

K.KUMARESH BABU, J.

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Judgment in
W.A.No.567 of 2021

24.04.2024