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W.A.Nos.188 and 901 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM :

**THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.A.Nos.188 and 901 of 2023
&
C.M.P.Nos.1761 and 8986 of 2023**

B.Lalitha	...	Appellant in W.A.No.188 of 2023
B.Aadhirai	...	Appellant in W.A.No.901 of 2023
Vs.		
The Secretary to the Government, Tamil Nadu Public Service Commission, Chennai - 600 003.	...	Respondent in W.A.No.188 of 2023 and 1 st respondent in W.A. No. 901 of 2023
B.Lalitha	...	2 nd Respondent in W.A.No. 901 of 2023

Writ Appeals filed under Clause 15 of the Letters Patent, against the common order dated 15.12.2022 passed by the learned Judge in W.P.Nos.27754 and 23316 of 2021 respectively.

For Appellant in
W.A.No.188 of 2023 : Mr.C.Prakasam



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For Appellant in
W.A.No.901 of 2023 : Mr.V.Ramamurthy

For 1st Respondent
in both Writ Appeals : Mr.R.Bharanidaran
Standing Counsel

For 2nd Respondent
in W.A.No.901 of 2023 : Mr.C.Prakasam

COMMON JUDGMENT

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

The appellants have filed these writ appeals challenging the common order passed by the learned Judge in W.P.Nos.27754 and 23316 of 2021 on 15.12.2022, whereby the learned Judge rejected the relief sought by the appellants, seeking a direction to the respondent authorities to select them to the post of Assistant Section Officer (Translation) (Hindi) in the Tamil Development and Information Department of the Tamil Nadu Secretariat Service, pursuant to a recruitment notification dated 08.11.2019 issued by the Tamil Nadu Public Service Commission (in short 'TNPSC').

2. The facts in brief are that the TNPSC had issued a recruitment notification for the post in question and conducted written examination on 11.01.2020 and published the result on 25.02.2021. The appellants were provisionally selected and were called to upload the requisite certificates through



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online. The appellant in W.A.No.188 of 2023 claimed that she could not upload her documents, as she was suffering from COVID-19 during that period and was unaware of the email intimation sent by the TNPSC regarding document submission. The appellant in W.A.No.901 of 2023 stated that she received email intimation late at 11:02 am on 12.10.2021 and despite attempts to access the website until 6:30 pm, she could not upload documents due to technical glitches in the TNPSC website. She emailed the documents to the website of the TNPSC on 12.10.2021 itself and sent hard copies to the TNPSC office on the next day. In the said circumstances, the appellants preferred writ petitions viz., WP Nos. 27754 and 23316 of 2021 seeking a direction to the respondent authorities to select them for the post of Assistant Section Officer (Translation in Hindi) by considering their marks in accordance with law.

3. By order dated 15.12.2022, the learned Judge dismissed the aforesaid writ petitions by holding that the notification did not provide for any power to relax the deadline condition. While so, the learned Judge placed reliance on the decisions of the Apex Court in ***Sanjay K.Dixit and others Vs. State of Uttar Pradesh and others [2019 (17) SCC 373]*** and ***The State of Tamil Nadu and others. Vs. G.Hemalathaa and another [Civil Appeal No.6669 of 2019, dated 28.08.2019]*** wherein, it was held that the conditions in a recruitment notification have to be strictly followed unless relaxation is specifically



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provided for in the notification. The relevant portion of the order of the learned Judge is extracted below for ready reference:

"12. The only issue that arises for consideration in this Writ Petition is whether despite the fact that the respective petitioners have not uploaded the certificates on or before the deadline fixed by the respondent Commission as per the recruitment notification, this Court while exercising powers under Article 226 of the Constitution of India can relax the condition by enabling the petitioners to submit the certificates beyond the deadline fixed under the recruitment notification.

13. The decision relied upon by the learned counsel for the petitioner reported in 2005 (9) SCC 779 does not have any bearing for the facts of the instant case. The said conditions did not deal with a case involving recruitment to a public post. It involved a case of a student applying for a medical course who was having the essential qualification for applying to the medical course but her application to write the examination was rejected for no fault of hers. She was not granted admission in a Medical College, as candidates who secured lower ranks were already admitted. That was a case where the aspirant did not commit any mistake due to the aspirant's fault. The Zilla Sainik Board had committed a mistake in not issuing a correct certificate and the said mistake was rectified in the second certificate issued on 16.07.2003 which was beyond the deadline prescribed under the notification and only on that ground the Honourable Supreme Court directed the respondents to grant admission to Dolly Chhanda, the aspirant. The relevant paragraph of the said decision reads as follows:

"10. The appellant had qualified in JEE~2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year."

14. The Honourable Supreme Court did not relax the condition imposed under the notification in the aforesaid decision but had granted the relief to the



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Appellant (Dolly Chhanda) only on the ground that for no fault of the Appellant (Dolly Chhanda) she was not granted admission. Therefore, the aforesaid decision does not apply to the facts of the instant case.

15. The decisions relied upon by the learned Standing Counsel appearing for the respondent Commission squarely applies to the facts of these cases. In both the decisions relied upon by the learned Standing Counsel referred to supra, it has been consistently held that the relaxation of the terms and conditions of a recruitment notification cannot be granted by Courts unless and until the recruitment notification provides for such a relaxation by the Authorities concerned. Admittedly, in the subject recruitment notification, there is no provision for relaxation of the terms and conditions. Admittedly, in these cases, the respective petitioners have not uploaded the certificates on time, though they may state reasons for the same. Whether the reasons given by the respective petitioners are genuine or not, cannot be considered by this Court while exercising powers under Article 226 of the Constitution of India that too when the respondent Commission has denied the same in their Counter Affidavits.

16. The petitioner in W.P.No.27754 of 2021 states that only due to being infected with Covid and due to the said reason, she did not notice the email received from the respondent Commission and she did not upload the certificates on time. Learned counsel for the petitioner has also submitted that the Honourable Supreme Court in the case of re~extension of limitation had granted blanket extension until 28.02.2022 on account of Covid~19 pandemic. However, this Court is of the considered view, when the respondents have categorically denied the reason given by the petitioner for not uploading the certificates on time, this Court while exercising powers under Article 226 of the Constitution of India cannot make a roving enquiry as to whose statement is correct. Therefore, the contention of the petitioner in W.P.No.27754 of 2021 has to be necessarily rejected.

17. The relevant paragraphs with regard to the powers of this Court to relax the terms and conditions of the recruitment notification as observed in the decisions relied upon by the learned Standing Counsel for the respondent are as



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follows:

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a) Sanjay K.Dixit and Others Vs. State of Uttar Pradesh and Others
reported in 2019 (17) SCC 373:

"11. Admittedly, the Rules governing the selection to the posts of Technician Grade 2 (Apprenticeship Electrical) require every candidate to submit a Doeacc certificate signifying completion of 80 hours- CCC at the time of interview. Such condition was made compulsory. The advertisement also contained the condition regarding submission of the certificate at the time of interview. There is no doubt that there exists a power of relaxation of any of the Rules which could be exercised by the Chairman of the Corporation. It is nobody's case that the Chairman/Managing Director was not competent to relax the Rules. But, the submission made by the learned counsel for the writ petitioners is that the relaxation could not have been done as the advertisement did not mention about a possible relaxation of the Rules. We find force in the said submission made on behalf of the writ petitioners as this Court in *Bedanga Talukdar [Bedanga Talukdar v. Saifudaullah Khan, (2011) 12 SCC 85 : (2011) 2 SCC (L&S) 635]* held as follows : (SCC pp. 92~93, para 29)

29. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India.'

"12. We are in respectful agreement with the above judgment of this Court. Exercise of the power of relaxation without informing the



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candidates about the existence of such power would be detrimental to the interests of others who did not possess the certificate and did not take part in the selection process. We are unable to accept the submission that selection is on the basis of the performance of the candidates in the written test and interview and that the Doeacc certificate is not an essential requirement. The Rule as well as the advertisement provide for submission of the certificate at the time of interview, compulsorily. The Rule further provides for production of the certificate as an additional requirement for selection. The above stipulation in the Rule as well as the advertisement cannot be ignored."

b) The State of Tamil Nadu and Others Vs. G.Hemalathaa and Another reported in decision dated 28.08.2019 in Civil Appeal No.6669 of 2019:

"5. Mr. R. Venkatramani, learned Senior Counsel for the Appellant submitted that the Instructions given to candidates taking examinations for selection to the post of Civil Judges clearly bars the candidates from using a pencil in any manner. The Instructions given to the candidates are mandatory and cannot be relaxed. Mr. Venkatramani contended that the initial stand taken by the Respondent that she did not use the pencil disentitles her from the relief sought for. No lenient view can be taken in cases of violation of the mandatory Instructions as the order in favour of the Respondent will be treated as a precedent. If the Respondent is given the relief sought for the other candidates who have been disqualified will also claim the same relief."

18. In view of the law laid down by the Honourable Supreme Court, this Court is of the considered view that the relaxation of the terms and conditions of a recruitment notification cannot be granted by this Court while exercising powers under Article 226 of the Constitution of India when the recruitment notification does not provide for any such a relaxation. This Court does not find any merit in both these Writ Petitions.

19. Accordingly, these Writ Petitions are dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed."

Aggrieved by the order so passed by the learned Judge, the appellants / writ petitioners have filed these writ appeals.



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4. The learned counsel appearing for the appellant in W.A.No.188 of 2023 submits that the appellant, possessing the requisite educational qualifications, appeared and passed the written test conducted by the respondent on 11.01.2020 in Paper-I and Paper-II. After passing the written test, she was provisionally selected among the shortlisted candidates and attended counseling held by the respondent on 25.08.2021, wherein out of five vacancies, four vacancies for Tamil were filled up and one Hindi vacancy remained unfilled after the 1st Phase of counseling. The learned counsel further submits that when the respondent scheduled the 2nd Phase of certificate verification from 04.10.2021 to 12.10.2021 through online uploading on the TNPSC website, the appellant could not complete the uploading due to undergoing treatment for COVID-19. Thereafter, when the 3rd Phase was scheduled from 10.11.2021 to 17.11.2021, the appellant still could not upload her documents due to heavy rains on the last date of 17.11.2021, which was then extended to 22.11.2021 by the respondent. However, due to post-COVID medical complications, the appellant could not see the email notification sent by the respondent commission at midnight of 22.11.2021 and her attempts to upload documents on 23.11.2021 were rejected as the deadline had passed. However, the appellant promptly approached the writ court and obtained an interim order dated 23.12.2021 allowing her to attend physical verification on 27.12.2021, pursuant to which she produced the



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certificates and was provisionally selected by the respondent's order dated 27.12.2021. While so, the learned Judge erred in dismissing the writ petition solely on the ground that there was no relaxation for cut-off date without considering her subsequent selection as per the interim order. It is also submitted that the learned Judge passed the common order dismissing the appellant's writ petition along with the writ petition of another candidate B.Aathirai, without considering the specific facts and interim order in favour of the appellant herein. With these submissions, the learned counsel prays to set aside the order passed by the learned Judge in the writ petition filed by the appellant.

5. The learned counsel for the appellant in W.A.No.901 of 2023 would submit that the learned Judge misconceived the facts and proceeded with the assumption that the appellant could not upload the documents due to her own failure to access the TNPSC website, whereas the truth is that other candidates also could not access the website due to server failure. The learned counsel further submits that the learned Judge failed to appreciate the counter affidavit filed by the 1st respondent / TNPSC. It is a clear admission that out of 5 candidates provisionally selected for document upload, only 1 could do so and 4 others including the appellant failed. This establishes that the E-Seva service on the 1st respondent's website was non-functional. The appellant continuously tried uploading till 6:30 PM on 12.10.2021, but could not succeed. She finally emailed



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the documents to the Commission's email address. This fact was not denied by the 1st respondent. Yet, the learned Judge erroneously concluded that the appellant made only one attempt and communicated the documents on next day. Thus, the learned Judge failed to appreciate the facts and materials on record. The learned counsel further submits that as per the 1st respondent's counter affidavit, individual communication was to be sent through SMS and email to provisionally selected candidates regarding document upload. However, the appellant did not receive any communication before 11:02 AM on 12.10.2021. The 1st respondent did not produce any proof of communication sent to the appellant on 01.10.2021 as claimed. Yet, the learned Judge accepted the respondent's oral submission on this aspect. This caused grave prejudice to the appellant. The learned counsel also submits that the 1st respondent's counter affidavit states that if the appellant faced difficulty in reaching the TNPSC, she ought to have personally visited the office as it was not far. However, the appellant did send a representation on 13.10.2021 explaining her predicament along with email on 12.10.2021 and registered post with documents on 13.10.2021. These facts prove her *bona fide* actions and difficulties faced, which the learned Judge failed to appreciate. That apart, the learned Judge erroneously equated the appellant's case with that of the 2nd respondent/appellant in W.A.No.188 of 2023, without appreciating the specific difficulties faced by the appellant in uploading documents, which she had sufficiently demonstrated through communications and



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attempts. The learned counsel further submits that the appellant did not seek relaxation in terms and conditions of recruitment, but insisted on strict compliance by the 1st respondent. As per the notification, individual communication was to be sent via SMS/email, which was not done in the appellant's case, depriving her of sufficient opportunity. Hence, the judgements relied upon by the 1st respondent are not applicable. The learned counsel finally submits that among the 5 candidates called for verification on 12.10.2021, the appellant was the top rank holder. Had she been allowed to upload documents, she could have been selected but for the technical glitch in the 1st respondent's website. The learned Judge failed to appreciate this important fact. In the light of these submissions, the learned counsel prays that the order passed by the learned Judge be set aside and the present appeal be allowed.

6. The learned standing counsel appearing for the respondent TNPSC submits that the recruitment process was conducted in a fair and transparent manner as per the terms and conditions stipulated in the notification. Individual emails were sent to all shortlisted candidates on 01.10.2021 informing them of the document upload schedule from 04.10.2021 to 12.10.2021. There were no technical failures or glitches in the E-Seva portal during this period, as evident from the fact that one candidate successfully uploaded the documents on 12.10.2021. The learned Standing Counsel further submits that the cut-off date



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for document submission was uniformly applied to all candidates. The inability of the appellants in both the appeals to upload the documents within the stipulated timeline, due to any reason whatsoever, does not entitle them to any relaxation as per the various Supreme Court decisions. Difficulties in uploading documents on the last date cannot justify relaxation under recruitment rules. In conclusion, the learned Standing Counsel submits that the learned Judge has rightly held that courts cannot relax cut-off dates and terms of recruitment and accordingly, dismissed the writ petitions filed by the appellants herein, by the order impugned herein, which does not require any interference by this court.

7. Heard the learned counsel on either side and perused the materials available on record.

8. It is seen that the original certificate verification and counselling for the post of Assistant Section Officer (Translation) in the Tamil Development and Information Department were held on 25.08.2021 for 12 candidates. Out of the 5 vacancies, 4 posts have been filled according to the prescribed qualifications, and the remaining one vacancy under the MBC/DC (PSTM) category for the said post remains unfilled in the Phase-I counseling. It is not in dispute that 5 candidates were provisionally admitted for Phase-II of Onscreen certificate verification, and the Tamil Nadu Public Service Commission (TNPSC) sent a message prescribing a



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deadline of 12.10.2021 for provisionally selected candidates to upload the requisite documents. A perusal of the record shows that out of the five candidates called for document verification, one candidate, viz., M.Revathi, successfully uploaded the documents through the e-Seva center, and her application was finally admitted. The remaining four candidates, including the appellants in the present appeals failed to upload their documents through the e-Seva centers. While so, the TNPSC published the IIIrd phase of certificate verification on 02.11.2021 for nine candidates to upload their documents through e-Seva centers from 10.11.2021 to 17.11.2021. The uploading date was further extended up to 22.11.2021 due to heavy rains. Among the nine candidates in the IIIrd phase, four candidates did not upload the documents (including the appellants), four candidates did not possess the prescribed qualifications and one candidate was provisionally admitted. In such circumstances, the appellant in W.A.No. 901 of 2023 filed W.P.No.23316 of 2021 and obtained an interim order on 01.11.2021, directing the TNPSC to accept her certificates by 15.11.2021. Consequently, her application was scrutinized and she was provisionally admitted, subject to the outcome of the writ petition. The remaining three candidates, viz., Natchiar, B. Lalitha, and Revathi, who failed to upload the documents in phase II, were given another chance to submit the necessary documents during phase III through e-Seva centers within 22.11.2021. They were informed of this through email and over phone on 20.11.2021. However, the appellant in W.A.No. 188 of 2023 (B.



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Lalitha) also, did not upload her documents during the second chance for selection to the post in question. Hence, she made a representation to the TNPSC, which was not considered, prompting her to file W.P.No.27754 of 2021. The learned Judge, following the interim order granted in W.P.No.23316 of 2021 on 23.12.2021, passed an interim order. However, when the writ petitions were taken up for final hearing, they were dismissed by the learned Judge by the order impugned in these appeals.

9. It is settled law that the terms and conditions of a recruitment notification, including deadlines for document submission, are mandatory and binding on all candidates, unless the notification itself provides for relaxation. In this regard, it may be relevant to refer to the relevant clauses of the notification No.31/2019 dated 08.11..2019, which read as follows:

"12. General Information

(J) Any subsequent claim made thereafter on submission of online application will not be entertained. Evidence for claims made in the online application should be uploaded / submitted in time, when called for. Failure to submit the documents within the stipulated time limit will entail rejection of the Application.

13. Other important instructions

(C) Communication to Applicants

Individual communication regarding the date and time of certificate verification and conselling will not be sent to the applicants by post. The details will be made available on the Commission's website. Applicants will be informed of the above fact only through SMS and e-mail and they should watch the Commission's website in this regard. Para 15 of the Notification Applicants should upload / submit their testimonials and all other relevant certificates for proof in



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respect of claims made - in the application with reference to this, notification as and when called for.

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Notes (5) of the Commission's Publication list dated 23.09.2021

Candidates who have been admitted for Onscreen Certificate Verification are hereby advised to watch constantly the Commission's website regarding mode, place, date and time of original certificate verification without fail. Failure to produce even any one of the essential documents will result in their non-admission to the next stage of selection."

In the present case, admittedly, the recruitment notification issued by the TNPSC did not provide for any power to relax the deadline condition for document submission. The appellants in both the appeals have failed to upload the required documents within the prescribed time frame. As already stated above, one candidate by name, M. Revathi, successfully uploaded the documents through the e-Seva center which fact reinforces the fairness and transparency of the recruitment process conducted by the TNPSC. The reasons assigned and grounds raised by the appellants for not uploading the documents within the deadline, such as, outbreak of COVID-19, technical glitches, or belated receipt of communication, cannot be countenanced by the Court. The appellants in both cases were given sufficient opportunity to upload the documents within the stipulated timeline, which was uniformly applied to all candidates. The interim orders obtained by the appellants are always subject to the final orders to be passed in the main cases and the same cannot override the mandatory conditions of the recruitment notification, which required document submission within the prescribed deadline.



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10. In the order impugned in these appeals, the learned Judge has correctly analysed the facts and circumstances of the case and dismissed the writ petitions filed by the appellants, based on the Supreme Court decisions in ***Sanjay K. Dixit and others vs. State of Uttar Pradesh and others [(2019) 17 SCC 373]*** and ***The State of Tamil Nadu and others vs. G. Hemalathaa and another [Civil Appeal No. 6669 of 2019, dated 28.08.2019]***, which prohibit the courts from relaxing the terms and conditions of a recruitment notification in the absence of any provision for such relaxation in the notification itself or for any valid reasons.

11. Therefore, we do not find any irregularity or infirmity in the order so passed by the learned Judge in the writ petitions. As a result, the writ appeals fail and they are accordingly, dismissed. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

[R.M.D,J.] [M.S.Q, J.]
13.03.2024

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Index: Yes / No.

Speaking order/ Non-speaking order

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To

The Secretary to the Government,
Tamil Nadu Public Service Commission,
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