



W.A.Nos.2813 and 2817 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.05.2024

CORAM :

THE HON'BLE MR. R. MAHADEVAN, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.2813 & 2817 of 2023

and

C.M.P.Nos.23483 and 23495 of 2023

W.A.No.2813 of 2023

C.Priyanga

... Appellant

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Chennai - 600 003.

2.The Industries Commissioner and
Director of Industries and Commerce,
Guindy, Chennai - 32.

3.G.Akila

4.The Secretary to the Government,
Micro Small & Medium Enterprises Department,
Secretariat, Chennai - 3.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order of the learned Judge dated 27.07.2023 in W.P.No.554 of 2022.



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For Appellant

: Mr.R.Govindasamy

For Respondents

: Mr.R.Bharanidaran
Standing Counsel for R1

Mr.C.Selvaraj
Additional Government Pleader
for R2 and R4

Mr.L.Chandrakumar
for M/s.VPN Associates for R3

W.A.No.2817 of 2023

Dhivya Janani.K.

... Appellant

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Nagar,
Chennai - 600 003.

2.The Secretary to the Government,
Micro Small & Medium Enterprises Department,
Secretariat, Chennai - 3.

3.The Industries Commissioner and
Director of Industries and Commerce,
Directorate of Industries and Commerce,
Guindy, Chennai - 32.

4.K.Kalai Selvi

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned Judge dated 27.07.2023 in W.P.No.6216 of 2022.

For Appellant

: Mr.R.Govindasamy



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For Respondents

: Mr.R.Bharanidharan
Standing Counsel for R1

Mr.C.Selvaraj
Additional Government Pleader
for R2 and R3

Mr.N.G.R.Prasad
For M/s.Row and Reddy for R4

COMMON JUDGMENT

The Acting Chief Justice

These writ appeals have been filed against the common order dated 27.07.2023 passed by a learned Judge in W.P.Nos.554 and 6216 of 2022 respectively.

2. The appellants preferred the aforesaid writ petitions challenging the provisional selection of the private respondents for appointment to the post of Assistant Director of Industries and Commerce (Technical) in Micro, Small and Medium Enterprises [EI(1)] Department included in the Tamil Nadu Industries Service for the year, 2019 by the first respondent as per Notification No.34 of 2019 dated 09.12.2019, quash the same, and consequently, direct the first respondent to select the appellants to the said post.

3.Facts in brief are as follows:



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3.1. The appellant in WA No. 2813 of 2023 belongs to Scheduled Caste community. She is a graduate in B.E. (Printing Technology). After her graduation, from 08.08.2016 to 17.05.2019, she worked in M/s.Technova Imaging Systems Private Limited, Saidapet, Chennai, which is involved in the manufacturing and marketing of offset plates and chemicals, marketing of equipment and software, and she obtained an experience certificate on 22.03.2021 from the said company. Pursuant to the advertisement issued by the first respondent *vide* notification no.34/2019 dated 09.12.2019, the appellant applied for the post of Assistant Director of Industries and Commerce (Technical) enclosing all the necessary educational and experience certificates. Subsequently, she attended the written examination on 09.01.2021 and interview on 17.12.2021. After certificate verification, the first respondent issued the ranking list on 06.01.2022 for the post in question and thereafter, conducted counselling on 19.01.2022. As per the ranking list, the appellant scored a total mark of 322.50 under SC category and was placed at 29th position. On the other hand, one G.Akila (third respondent in WA No.2813 of 2023), who was not having proper experience and did not fulfil the eligibility condition stipulated in the notification, though was at 26th rank, was selected provisionally for appointment to the said post.

3.2. The appellant in W.A.No.2817 of 2023 belongs to Most Backward



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Classes (MBC) community. She is a graduate in B.E. (Chemical Engineering). After her graduation, she worked in M/s.Sterlite Industries India Limited from 03.06.2008 to 09.03.2009 and in M/s.Hindustan Zinc Limited as Process Engineer from 12.03.2009 to 26.03.2011 and thus, had 3 years of practical experience in the factory / workshop. In response to the notification dated 09.12.2019, she applied for the post of Assistant Director of Industries and Commerce (Technical) with all necessary educational and experience certificates. Subsequently, she attended the written examination on 09.01.2021 and interview on 17.12.2021. She secured a total mark of 364.25 under MBC/DC category and was placed at 15th position in the rank list. However, one K.Kalaiselvi (fourth respondent in WA No.2817 of 2023) who was not having proper experience and did not fulfil the eligibility condition stipulated in the notification, though was at 14th rank, was selected provisionally for appointment to the said post.

3.3. Stating that in gross violation of eligibility condition as mandated in the notification issued by the first respondent, the private respondents were selected and were given appointment to the post in question, the appellants preferred the writ petitions for the relief as stated *supra*.

3.4. It was contended on behalf of the first respondent before the



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learned Judge that based on the marks secured by her, rank order, rule of reservation of appointment and number of vacancies available, the appellant in W.A.No.2813 of 2023 had not reached the zone of consideration for selection to the post in question. Whereas the third respondent, who belonged to the same community, secured a total mark of 331.50 and placed at 26th position in the ranking list, reached the zone of consideration for selection. Further, the practical experience certificate uploaded by the third respondent was verified by the officers deputed by the Director of Industries and Commerce and thereafter, her application was considered for further selection. Therefore, the selection of the third respondent to the post in question cannot be questioned by the appellant herein.

3.4.1. In respect of the appellant in W.A.No.2817 of 2023, it was submitted on behalf of the first respondent that this appellant also had not reached the zone of consideration for selection. Whereas the fourth respondent had secured 365.25 marks and was placed at 14th position in the ranking list and accordingly, reached the zone of consideration for selection. Therefore, considering her practical experience, the fourth respondent was provisionally selected to the post in question. Thus, according to the first respondent, there was no violation in the selection process.



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3.5. It was put forth on behalf of the Government authorities that the third respondent in W.A. No. 2813 of 2023 worked as Assistant Professor in an Engineering College, an organization recognized by the Government; the experts from the Department concerned opined that contours of the definition of factory / workshop experience in factory / workshop experience would include Teaching Theory and Practical to students as well as maintaining Laboratory Equipments; and therefore, she had fulfilled the eligibility condition and accordingly, her candidature was considered for provisional appointment to the post in question. In respect of the fourth respondent in WA No. 2817 of 2023, it was submitted that as per the letter of the Development Commissioner/SSI, Ministry of Small Scale Industries, Government of India, bearing No.5(1)/2001-SSIBD&Pol dated 10.09.2021, IT related activities and IT enabled services have been treated as Industrial Activities. The experts from the Department concerned were of the opinion that contours of the definition of factory/workshop experience in factory/workshop experience have been broadened to accommodate computer software development and other IT related venture as industrial activities. The fourth respondent worked in Tata Consultancy Services as Assistant Systems Engineer from 06.07.2016 to 19.12.2017. As TCS is an organization recognized by the Government and the fourth respondent gained experience in the said organisation, the experts opined that the individual had fulfilled the eligibility condition. Accordingly, the candidature of the fourth respondent was selected for



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the post in question.

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3.6. Counter affidavits were also filed by the private respondents before the learned Judge justifying their respective contentions.

3.7. After hearing all the parties, the learned Judge dismissed the writ petitions as devoid of merits, by a common order dated 27.07.2023, the relevant passage of which is extracted below:

"35. Therefore, this court is of the considered view that when the expert body assessed the experience obtained in the college by teaching as well as doing lab and equipment maintenance work by the selected candidate as Assistant Professor and found that the work discharged by the selected candidate was an industrial activity, this court cannot take a different view to hold that the opinion of the experts is incorrect, unless it is shown that the opinion of the experts is totally arbitrary or unreasonable. There appears justification in the conclusion arrived at by the experts. When two views are possible and experts have taken a reasonable view, the same deserves acceptance. It is the consistent view of the Supreme Court that courts shall not ordinarily test the opinion of the experts unless their decision is totally arbitrary or unreasonable. Therefore, the contention of the petitioner that the 3rd respondent was not having adequate experience and her selection for appointment to the post of Assistant Director (Technical) does not appeal to me and the writ petition has to necessarily fail."

"56. The eligibility condition with respect to experience prescribed in the notification issued by the respondent - TNPSC cannot be given a narrow and literal meaning that it would apply only to the person who had obtained work experience in a factory or workshop recognized by the Central Government / State Government. TCS (software development industry) where the petitioner obtained experience could also be considered as factory for purpose of assessing practical experience. It is the consistent view of the Supreme Court that courts shall not ordinarily test the opinion of the experts unless their decision is totally arbitrary or



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unreasonable. As already discussed, when the expert body assessed the practical experience obtained by the 4th respondent in TCS and based on the verification made by the expert body the recruiting agency has found that the 4th respondent is eligible to be appointed to the post, in the light of the principle laid down by the Supreme Court in the case of Ganpat Singh Gangaram Singh Rajput vs. Gulbarga University [(2014) 3 SCC 767] and Secretary, Department of Health and Family Welfare v. Anita Puri (Dr.) [(1996) 6 SCC 282], this court does not want to take a different view to hold that the opinion of the experts is incorrect, in particular when the experts considered the suitability of a candidate for a specified post after giving due consideration to all the relevant factors. Therefore, the contention of the learned counsel for the petitioner that the practical experience obtained in Software / Information Technology Industries should not be considered as practical experience obtained in the factory for considering appointment to the post does not appeal to me."

"59.For the foregoing discussions, this court is of the view that the 4th respondent was fully qualified with adequate practical experience for appointment to the post and she was selected on merits and therefore, the contention of the petitioner that the 4th respondent was unqualified for the post as she did not possess practical experience cannot be countenanced. The writ petition is thus devoid of merits and the same deserves only to be dismissed."

3.8. Challenging the order so passed by the learned Judge in the writ petitions, the present appeals have been filed by the writ petitioners.

Submissions of the parties

4.Mr.R.Govindasamy, learned counsel for the appellants submitted that as per Notification No.34/2019 dated 09.12.2019, applications were invited from the eligible candidates for direct recruitment for the post of Assistant Director of Industries and Commerce (Technical) and Assistant Superintendent (Chemical wing) whose eligibility is prescribed under clause 4B that the candidate must have



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practical experience in a factory/ workshop for a period of not less than one year. However, the selected candidates whose selection was challenged by the appellants, did not possess the said practical experience qualification. Yet, the learned Judge erred in not interfering with the illegal appointment of the private respondents.

4.1. Adding further, it is submitted by the learned counsel that the appellant in WA No.2813 of 2023 does possess the practical experience as per the notification issued by the first respondent; the company where she worked was registered under the Factories Act; and the certificate produced by her in this regard has been verified by the authority and accepted as a genuine one. On the other hand, the third respondent in WA No.2813 of 2023 viz., G. Akila, does not possess the practical experience of working in a factory/ workshop for a period of one year and that she previously worked as Lecturer in an Engineering College and admittedly produced experience certificate for having worked in an educational institution. According to the learned counsel, the certificate produced by the third respondent with regard to her practical experience does not meet the eligibility condition as the college, where she worked, does not come within the purview of the factory/workshop. Further, the third respondent did not produce the experience certificate in the prescribed format in Annexure -1 as per the notification and some of the columns in the format were not filled, more



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particularly, the 3rd column with regard to the registration number of the Firm/Workshop/Company under the Factories Act, 1948. In other words, the certificate did not disclose the nature of work performed by the third respondent in the workshop/factory and also the factory's registration number and the State/Central Government approval number and date. Therefore, the first respondent ought to have rejected the application of the third respondent from the initial stage of process of application, but, instead, the first respondent allowed the third respondent to attend the examination and oral test as well. That apart, the third respondent produced the experience certificate obtained from the educational institution only on 27.09.2021 and she did not upload her experience certificate within the time prescribed by the first respondent. The above said aspects have not been taken note of by the learned Judge. Furthermore, the learned Judge erred in treating the Proceedings in RC.No.2326/A1/2023 dated 20.07.2023 sent by the General Manager, District Industries Centre, to the Industries Commissioner/ Director of Industries and Commerce, Guindy, Chennai, as opinion of the Expert committee, but, it is only the remarks to the averments raised in WP No. No.554 of 2022. It is also emphatically submitted that the observation of the learned Judge that if the expert body considers the suitability of a candidate for a specified post giving due consideration to all the relevant factors, then, the Court should not ordinarily interfere with the selection of Appointing Authority, is unsustainable since the Notification in a common



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recruitment process, once having specified a particular condition for eligibility, the same cannot be relaxed or given a wider ambit than what is understood from the plain meaning.

4.2. In respect of the appellant in W.A.No.2817 of 2023, it is submitted by the learned counsel that the fourth respondent Kalaiselvi does not possess the practical experience of having worked in a factory / workshop for a period of one year and she admittedly produced the experience certificate dated 12.01.2018 for having worked as Assistant Systems Engineer from 06.07.2016 to 19.12.2017 in Tata Consultancy Services, which does not come under the definition of factory / workshop as per Section 2(k) of the Factories Act, 1948. As such, the learned Judge ought not to have accepted the work experience certificate submitted by the fourth respondent without verifying the validity of the same. It is also submitted that the Director of Industrial Safety and Health is the competent authority to register a factory under the Factories Act, 1948. However, the learned Judge has not considered the information given by the Public Information Officer/Joint Director, Directorate Industrial Safety and Health, Guindy, Chennai, under the RTI Act that the Technology (IT) Company, Educational Institution and Laboratories do not come under the purview of the Factories Act, 1948. It is further submitted that the learned Judge cited the judgment rendered in the case of *Assistant Director v. M/s.Western Outdoor Interactive* [2012 SCC Online Bom



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939] and wrongly came to the conclusion that the Software Company will fall within the meaning of manufacturing process under Section 2(k) of the Factories Act, 1948. But, the said judgment clearly reveals that the computer and IT related companies come under the meaning of manufacturing process for the purpose of ESI Act and not in general and therefore, the same is inapplicable to the facts of the present case. With these submissions, the learned counsel prayed to allow these appeals by setting aside the order impugned herein.

5. Per contra, Mr.L.Chandrakumar, learned counsel for the third respondent in W.A.No.2813 of 2023 submitted that the third respondent possessed B.E. Electrical and Electronics Engineering and M.E. Power Systems Engineering and gained around 8 years of practical experience in the workshop at Dr.G.U.Pope College of Engineering recognized by the Central Government. Apart from 8 years experience, she has 8 months of working experience as an Assistant Engineer. The third respondent uploaded the required documents, which were also properly verified by the authorities. Only thereafter, the first respondent selected the third respondent for appointment to the post in question. Thus, according to the learned counsel, the learned Judge has properly dealt with the matter and dismissed the writ petition filed by the appellant, by the order impugned herein, which does not require any interference by this court.



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6. According to the learned counsel Mr.N.G.R.Prasad, the fourth respondent in W.A.No.2817 of 2023 worked in M/s.Tata Consultancy Services as Assistant Systems Engineer from 06.07.2016 to 19.12.2017 and hence, she possessed the required practical experience as notified by the first respondent. The learned counsel further made similar arguments as raised by the learned counsel for the third respondent in W.A. No. 2813 of 2023 and ultimately submitted that the order passed by the learned Judge need not be interfered with by this court, since the same has been passed after considering all the facts and circumstances of the case.

7. We have heard Mr.R.Bharanidharan, learned counsel appearing for the TNPSC and Mr.C.Selvaraj, learned Additional Government Pleader appearing for the respondent authorities, who have reiterated the submissions as placed before the learned Judge, and also perused the materials placed before this court.

Discussions

8. There is no dispute as regards the qualification acquired by the private respondents viz., G.Akila, third respondent in WA No.2813 of 2023 and K.Kalaiselvi, fourth respondent in WA No.2817 of 2023. But, the dispute is only with regard to the practical experience said to have been obtained by them.



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9. It is very clear from clause 4B of the notification no.34/2019 dated 09.12.2019 issued by the first respondent that one of the qualifications prescribed for the post of Assistant Director of Industries and Commerce (Technical) is possession of practical experience in a factory or workshop for a period of not less than one year. It was also specifically mentioned that such experience for the post of Assistant Director of Industries and Commerce (Technical) should have been obtained from a factory or workshop recognised by the State Government / Central Government.

10. According to the appellants, they had acquired the required practical experience and also produced the experience certificate in proper format within the time stipulated in the notification, but they were not selected for the post in question and the private respondents, who had not acquired the practical experience in a factory or workshop, were selected for appointment.

11. On a perusal of the documents produced before us, it is seen that the third respondent in WA No.2813 of 2023 had previously worked as Lecturer in Dr.G U Pope College of Engineering, which does not come under the purview of factory or workshop and in the said college, there is no workshop and only a lab facility is available. Further, the experience certificate produced by her on



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06.09.2018 clearly reveals that the third respondent worked as an Assistant Professor in the Department of Electrical and Electronics Engineering from 08.09.2010 to 25.06.2018 and she was doing teaching and lab work in the said college. It is an admitted fact that lab work cannot be treated as experience in a factory or workshop. It is also to be noted that the third respondent had not uploaded the experience certificate in the proper format, in which, column no.1 relating to Name and address of the Firm / Workshop / Company / Government Department / Public Sector Undertaking, was filled as 'Institution' by striking off the words 'workshop/company', column no.2 relating to whether the said Firm/ Workshop/company registered under the Factories Act, 1948, was filled as 'Nil' and column no.3 relating to Registration number of Firm/Workshop/Company under Factories Act 1948, was also filled as 'Nil'. That apart, though the notification stipulates that the candidates selected for certificate verification provisionally should upload the scanned copies of documents from 22.03.2021 to 30.03.2021, the third respondent obtained her experience certificate only on 27.09.2021 i.e., after the certificate verification held on 08.04.2021, which would belie the statement made by the authorities that the experience certificate produced by the third respondent was properly verified. Thus, it is clear that the third respondent does not possess the practical experience in a factory / workshop for a period of one year, thereby meeting out the eligibility criteria for the post in question.



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12. As far as the fourth respondent in WA No.2817 of 2023 is concerned, it is to be noted that she earlier worked in Tata Consultancy Services, which is an IT company. According to the learned counsel for the appellant, the IT related company is not coming under the purview of the factory / workshop and the same is not registered under the Factories Act and hence, the experience certificate produced by the fourth respondent does not meet the eligibility condition prescribed in the notification issued by the first respondent. This court finds some force in the said submission, as the documents produced before us would reveal that the fourth respondent did not produce the experience certificate in the prescribed format in Annexure-1 and that the registration number of the Firm / workshop / company under the Factories Act, 1948 and the State / Central Government approval number and date were not mentioned by the fourth respondent.

13. It is the specific case of the respondent authorities that the practical experience certificates produced by the candidates were verified by the officers deputed by the Director of Industries and Commerce. However, a cursory glance at the experience certificates in respect of all the selected candidates would not whisper anything about the manner in which the certificates were scrutinised by the authorities concerned. That apart, the Director of Industrial Safety and



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Health, Guindy, Chennai, who is the competent authority, has given a report through the RTI Act, to the effect that the technology (IT) company, educational institution and laboratories do not come under the purview of the Factories Act, 1948. Therefore, this court is of the opinion that the private respondents did not meet the eligibility condition as per the notification issued by the first respondent and hence, they are not eligible for appointment to the post in question. However, the learned Judge erred in dismissing the writ petitions, observing that the opinion of the experts is paramount and the same cannot be interfered with. That apart, the issue as to whether the activities of data processing and preparation of software would constitute a manufacturing process, is pending consideration before a Larger Bench of the Supreme Court [*Seelan Raj and others v. Presiding Officer, 1st Additional Labour Court, Chennai and others, (2001) 4 SCC 634*] and the decisions relied on by the learned Judge are inapplicable to the present cases.

14. It is nobody's case that the appellants do not possess the required practical experience as prescribed in the notification and the facts remain that the applications of the appellants were properly scrutinised and they were found genuine and only thereafter, they were called for written and oral tests. Therefore, the appellants are found eligible for the post in question.

Conclusion



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15. In view of the foregoing findings, the common order of the learned Judge in dismissing the writ petitions, and also the provisional selection list dated 08.02.2022, impugned in the writ petitions, insofar as it relates to the private respondents in these writ appeals, are liable to be set aside and are accordingly, set aside.

16. As a sequel, both the writ appeals are allowed by directing the respondent authorities to consider the candidature of the appellants for appointment to the post in question, if they are found otherwise eligible, and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D.,A.C.J.] [M.S.Q, J.]
24.05.2024

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No

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To

1.The Secretary,
Tamil Nadu Public Service Commission,
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2.The Industries Commissioner and



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