

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2012

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO
and
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Writ Appeal No.2265 of 2011
and
M.P.No.1 of 2011

E.Bamila

... Appellant

vs

The Secretary,
Tamil Nadu Public Service Commission,
No.1, Greams Road,
Chennai-600 006.

... Respondent

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 15.09.2011, made in W.P.No.20439 of 2011.

For Appellant : Mr.R.Singgaravelan

For Respondent: M/s.C.N.G.Niraimathi.

J U D G M E N T

(Judgment of the Court was delivered by
Justice Elipe Dharma Rao)

This writ appeal is directed against the order, dated 15.09.2011, made in W.P.No.20439 of 2011, whereby the writ petition, which was filed by the appellant seeking a direction to the respondent to treat her candidature for direct recruitment for the posts included in the combined engineering services examination in Advertisement No.247 on the basis of the community certificate submitted as belonging to Backward Class Community by considering her representations, dated 18.08.2011 and 26.08.2011, was dismissed.

2.It is the case of the appellant that she belongs to Kerala Mudali Community, which is classified as one of the Backward Castes, listed as Item No.52 in the list furnished by the Government as per G.O.(Ms.) No.85, dated 29.07.2008, G.O.(Ms) No.97, dated 11.09.2008 and G.O.(Ms) No.37, dated 21.05.2009 of BC, MBC and Minorities Welfare (BCC) Department and pursuant to the advertisement

No.247 published by the respondent inviting applications for direct recruitment to the posts included in the combined engineering services examination, she has applied and the respondent, after scrutinizing her application, entertained her application and sent Hall ticket for the written test held on 24.10.2010. It is also the case of the appellant that pursuant to the provisional selection, she was directed to appear on 18.08.2011 at the Office of the respondent for the oral test, vide letter dated 25.07.2011.

3.It is the further case of the appellant that when she appeared for the oral test on 18.08.2011 and for verification of original documents, she came to know that she was called under the 'Other Communities Category' instead of 'Backward Community', on the ground that she has not enclosed her community certificate along with the OMR sheet and hence, she has sent a representation, dated 19.08.2011, enclosing the copy of the community certificate issued by the Tahsildar, Agastheeswaram Circle, Kanyakumari District, to the respondent requesting them to consider her candidature under the category of Backward Community on the basis of the community certificate. It is also the case of the appellant that thereafter, on 25.08.2011, the respondent has published the mark statements of the candidates, wherein her register number and the marks secured by her got displayed in the General Category and hence, the appellant has again sent a representation, dated 28.08.2011, to the respondent requesting them to consider her candidature under Backward Class quota on the basis of the community certificate submitted by her. As the respondent Board did not consider her candidature under Backward class quota on the basis of the community certificate furnished by her on 19.08.2011, the appellant herein filed W.P.No.20439 of 2011.

4.The learned single Judge, on consideration of the facts and circumstances of the case, dismissed the writ petition by holding that the petitioner/appellant has not made out any case for entertaining the writ petition. Aggrieved by the said order, the present writ appeal has been filed.

5.Heard the learned counsel for the appellant and the learned Standing Counsel appearing for the respondent Board.

6.We have gone through the entire materials placed on record, including the originals produced by the respondent. After going through the original OMR application submitted by the candidate in response to the Advertisement No.247, dated 14.07.2010, we are able to see that though in column No.7 of the first page of the OMR application, meant for quoting the community of the candidate, it has been shaded black by the candidate/appellant, thereby stating that she belongs to BC, but, in the column meant for enclosures, after postal receipt and date of birth, box No.3, meant for community certificate, has not been shaded. Therefore, it indicates that the appellant has not enclosed the community certificate in proof of the community claimed by her. But the respondent, instead of rejecting her application as per Para No.11 in the Notification read with clause 15 of the Instructions given to the candidates, treated her as a candidate under General category by relying on their own instructions issued as per Office Order No.59, dated 07.11.2006, which is issued in supersession of Office Order No.26, dated 22.04.2004, in relation to the scrutiny of application for admission to the Preliminary and Main Written Examination, item 3(b) of which states that, 'in case community column is not shaded and no supportive documents are sent, the candidate would be treated as OC candidate and application processed accordingly'.

7.It is also seen from the perusal of the records that the Notification was issued by the respondent Board on 14.07.2010 and the appellant was allowed to appear for the written test, which

was conducted on 24.10.2010, and thereafter, she was allowed to appear for the oral interview for verification of the originals on 18.10.2011 and on coming to know that the appellant was classified under the General Category, she tried to claim herself as a candidate under the Backward Community by producing the Community Certificate issued by the Tahsildar, Agastheeswaram Circle, Kanyakumari District as she belongs to Kerala Mudali Community, which is classified as one of the Backward Classes and listed as Item No.52 in the list furnished by the Government as per G.O.(Ms.) No.85, dated 29.07.2008, G.O.(Ms) No.97, dated 11.09.2008 and G.O.(Ms) No.37, dated 21.05.2009 of BC, MBC and Minorities Welfare (BCC) Department. But, the respondent has not accepted the document sent by the appellant on the ground that it is too late to submit the document in support of her case, more so, after attending the written examination and the oral interview. As the appellant has not secured the minimum qualifying requirement for selection under the reserved category, she was not selected and therefore, she has approached this Court and filed the writ petition.

8. Further, it is also brought to our notice by the learned Standing Counsel appearing for the respondent-Tamil Nadu Service Commission that apart from Office Order No.59, there is another Office Order No.60, dated 07.11.2006, wherein, item A(iii) (General Instructions) contemplates that, 'if the candidate claims to have sent copies of any documents in the list of enclosures but such copies are not found with the application form, the same should be called for from him or her by Registered Post with Acknowledgment due within 15 days from the date of issue and if the same is not received within the stipulated time or received defectively or issued by any authority after the date of receipt of the application, the application form should be rejected or the claimed benefit denied, as the case may be, after obtaining the orders of the Deputy Secretary concerned/Controller of Examinations'.

9. The respondent/Tamil Nadu Public Service Commission has been constituted under Article 315 of the Constitution of India, which mandated that 'subject to the provisions of this Article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State'. The functions of the Public Service Commission are prescribed under Article 320. Under the proviso to Article 320(3), the President or the Governor, as the case may be, are empowered to make regulations, specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

10. It is to be mentioned that while dealing with a case pertaining to illegalities committed by some of the candidates in Group-I examination conducted by the respondent/TNPSC, in W.A. Nos.1063 and 1287 of 2009, dated 4.3.2011 (A.B. NATARAJAN vs. THE SECRETARY, TNPSC AND OTHERS), a Division Bench of this Court, to which one of us (Eliphe Dharma Rao, J.) was a party, has held that the instructions to candidates published in the notification are to be scrupulously followed both by the candidate and also the Public Service Commission.

11. As could be seen from paragraph No.11 of the Notification dated 14.7.2010, it has been mandated therein, in no uncertain terms, that the application received without attested copies of certificates will be summarily rejected. When it is the admitted case that the appellant has not enclosed the community certificate, though claimed to be hailing from a Backward Class community, since she shaded the community column as BC, automatically, as per Paragraph No.11 of the Notification, her application should have been rejected by the respondent. But, the application of the appellant has been entertained by the respondent and she was even permitted to write the examination, treating her as a general category candidate. For this the respondent has relied on the office order NO.59, dated 7.11.2006, which has stated that in case community column is not shaded and no supporting documents are sent, the candidate would be treated as OC candidate and application processed accordingly. The

respondent has also relied on another office Order No.60, dated 7.11.2006, for having entertained the application of the appellant. According to Office Order No.60, dated 7.11.2006, 'if the candidate claims to have sent copies of any documents in the list of enclosures, but such copies are not found with the application form, the same should be called for from him or her by Registered Post with Acknowledgment due within 15 days from the date of issue and if the same is not received within the stipulated time or received defectively or issued by any authority after the date of receipt of the application, the application form should be rejected or the claimed benefit denied, as the case may be, after obtaining the order of the Deputy Secretary concerned/Controller of Examinations'. But in the appellant's case, the above office order was not invoked as contended by the counsel for the Commission and it is also not the case of the Commission as per records.

12. When the terms and conditions of the Notification, which are binding not only the candidate but also the Public Service Commission, mandates that incomplete or defective applications should be rejected summarily, the further exercise contemplated under Office Orders No.59 and 60, both dated 7.11.2006, is nothing but a wasteful one, since it permits an unqualified candidate to take down the examination and also not going to achieve any purpose, but would drive the Public Service Commission to an unnecessary litigation, like the one in hand. The office orders 59 and 60 relied on by the Service Commission are not only contra to the Clauses of the notification but also against Articles 14, 16, 315 and 320 of the Constitution and also working against the interest of genuine candidates applying for various services. Therefore, with a view to erase the confusion and keeping in mind the better interest of thousands of candidates taking on Public Service Commission examination, and further in view of the settled legal position that the terms and conditions in the Notification will bind not only the candidates but also the Public Service Commission, we set aside condition No.3(b) of both the office order Nos.59 and 60, dated 7.11.2006, being against Articles 14, 16, 315 and 320 of the Constitution and operating against the public policy and welfare.

13. The learned counsel appearing for the appellant has further submitted that in the case of one Subashini, a candidate who applied for the direct recruitment post included in Combined Engineering Service Examination 2010, as per printed form dated 12.05.2011, the respondent Commission has directed her to send the attested copies of certain documents to the Controller of Examinations, Tamil Nadu Public Service Commission, as the said documents have not been sent along with the application and when the said Subashini was given an opportunity to submit her enclosures, denying the same to the appellant by the respondent is arbitrary and hence, the entire action of the respondent is liable to be set aside.

14. On the other hand, the learned Standing Counsel for the respondent, in the written submission filed on behalf of the respondent, at paragraph No.17, has stated as follows:-

"With regard to the allegation made by the writ petitioner/appellant that she has been meted out hostile discrimination inasmuch as the Commission permitted a candidate by name S.S.Subhashini to produce a xerox copy of gazette for change of the candidate's initial from S.S.Subhashini to S.Subhashini but did not enable the writ petitioner to produce the community certificate at the time of oral interview by accepting the same from her hands, it is respectfully submitted that the non-production of document to show the circumstances in which a candidate's initial or name came to be changed has no bearing on the selection to be made and such a document is not in the list of mandatory enclosures. As stated above, the selection is made based on the mark secured by the candidate, the number of vacancies

notified in each post and the Rule of Reservation of appointment and the post options exercised by the candidates."

15. This reply by TNPSC, would convincingly make it clear that the case of the appellant cannot at all be equated with the said Subhashini, who stands altogether on a different footing. In their endeavour to justify the acceptance of the application of the appellant, the respondent/TNPSC. in their written submission, at Para No.19, have stated as follows:-

"It may not be out of place to submit that since the candidate namely writ petitioner/appellant herein, as rightly held by the learned single Judge, paid the necessary examination fees and also was within the age limit to apply under the unreserved quota, she was permitted by the Service Commission to participate in the written examination. Had she not paid the full fees and had she been over-aged to be considered as a general candidate, she would not have even been allowed to appear in the examination and her application would have been summarily rejected."

16. Thus, it is the case of the respondent/TNPSC in paragraph No.19 of the written submission filed on behalf of the respondent that, 'the writ petitioner/appellant, as rightly held by the learned single Judge, paid the necessary examination fees and also was within the age limit to apply under the unreserved quota, she was permitted by the Service Commission to participate in the written examination. Had she not paid the full fees and had she been over-aged to be considered as a general candidate, she would not have even been allowed to appear in the examination and her application would have been summarily rejected. This explanation offered on the part of the respondent/TNPSC for having allowed the appellant to appear for the examination does not appeal to us as it is not the quantum of fee paid that decides the eligibility in case of a candidate claims to be from reserved category, but not fulfilled the criteria enshrined therefor. As we have already quashed the above office orders, the above contention of learned counsel for the appellant needs no consideration, hence rejected.

17. It is settled principles of law, only the candidates under reserved category, who secured more marks in the selection are only considered under unreserved category, but in the present case, the consideration of the incomplete application of the reserved candidates under the unreserved category by the TNPSC is illegal and the application of the appellant should have been rejected by the TNPSC by invoking the power conferred in Para No.11 of the Notification read with clause 15 of the Instructions given to the candidates.

18. Though initially we decided to impose costs on the appellant for filing such a frivolous litigation, considering the fact that the appellant is unemployed, we deem it appropriate not to impose costs. Consequently, the connected M.P. is closed.

bs/Rao

To

The Secretary,
Tamil Nadu Public Service Commission,
No.1, Greams Road,
Chennai 600 006.