

Case relating to non-enclosure of certificate:**Parties :** K. Arun Sabhapathy Versus The Tamilnadu Public Service Commission & Others**Court :** High Court of Judicature at Madras**Case No :** Writ Petition No.26965 of 2008 & M.P.No.1 of 2008**Judges:** THE HONOURABLE MR. JUSTICE S.J. MUKHOPADHAYA & THE HONOURABLE MR. JUSTICE V. DHANAPALAN**Appearing Advocates :** For the Petitioner: AR.L. Sundaresan, Senior Counsel, M/s. A.L. Gandhimathi, Advocates. For the Respondents: R1, V.T. Gopalan, Senior Counsel, C.N.G. Ezhilarasi, R2, D. Sreenivasan, Addl.G.P., R3, T.S. Sivagnanam, Advocates.**Date of Judgment :** 16-12-2008**Head Note :-**

Constitution Of India – Article 226 - grievance of the petitioner is that though he applied for appointment to the post of Civil Judge (Junior Division) pursuant to the said Notification as a Backward Class Community category candidate and obtained fairly good marks in the written test held and persons having scored marks lower than him, have been appointed against the post reserved for the Backward Class community candidate, but the petitioner has not been declared as a successful candidate for appointment to the said post - therefore hold that the submission of a Community Certificate along with the OMR Application Form, is mandatory and not directory for the purpose of the present case and in the absence of such Community Certificate, the candidature of the candidate cannot be considered even for the Interview against the reserved category post - Similar view was taken by the Division Bench of this Court in the case of "R.Bagyaraj" wherein, this Court rejected the claim of the petitioner therein for appointment against a reserved category he having failed to submit Community Certificate.

Comparative Citation:

2009 (3) MLJ 197

Judgment :-

(Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the first respondent herein to treat the petitioner as a Backward Class Community candidate for the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service in the recruitment announced pursuant to the Notification No.164 dated 10.5.2008, of the first respondent herein.)

S.J. Mukhopadhaya, J.

The petitioner applied for appointment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service, conducted by the Tamil Nadu Public Service Commission (for

short, 'the TNPSC'), pursuant to the Notification No.164, dated 10.5.2008 issued by the TNPSC. Having not come out successful for appointment to the said post, he preferred the present Writ Petition to treat him as a Backward Class Community candidate for appointment to the said post.

2. The grievance of the petitioner is that though he applied for appointment to the post of Civil Judge (Junior Division) pursuant to the said Notification dated 10.5.2008 as a Backward Class Community category candidate and obtained fairly good marks in the written test held on 2/3.8.2008 and persons having scored marks lower than him, have been appointed against the post reserved for the Backward Class community candidate, but the petitioner has not been declared as a successful candidate for appointment to the said post.

3. The stand taken by the first respondent-TNPSC is that the petitioner, in Column No.7 of his OMR Application Form, claimed that he belonged to Backward Class and had shaded the 'Box' meant for Backward Class, but had not enclosed the required Community Certificate in support of his claim. This is also evident from Column No.25 of his Application Form "Check List for production of documents", wherein, he had not shaded the 'Box' against the Column 'Community Certificate', which clearly shows that he had not enclosed the Community Certificate in support of his claim that he belonged to Backward Class. In the result, the petitioner was classified under 'Others' (General Category) and his Application Form was processed accordingly. The petitioner scored 229 marks in the written examination and 28 marks in the oral test, totalling 257 marks, but could not come within the zone of appointment, as the last candidate belonging to the General Turn (General Category) scored 264. However, the petitioner's name has been placed under Serial No.2 in the waiting list for the General Turn (General Category).

4. Learned Senior Counsel appearing on behalf of the petitioner submitted that the petitioner produced the Community Certificate prior to the interview, which should have been accepted, he having claimed as Backward Class Category in the OMR Application Form.

According to the learned Senior Counsel appearing for the petitioner, the production of Community Certificate along with the OMR Application Form, was not mandatory, but only directory. He relied on Clause 5(iv) of the "Instructions, etc., to candidates" supplied by the TNPSC along with the Application Form, wherein it is stated that "... Mere admission to the interview or inclusion of name in the list will not confer on the candidates any right for appointment. The candidature, is therefore, provisional at all stages and the Commission reserves the right to reject any candidature at any stage, even after the selection has been made."

Learned Senior Counsel appearing for the petitioner placed reliance on the following decisions of the Supreme Court/Madras High Court:

- (i) Charles K. Skaria and others vs. Dr. C. Mathew and others, AIR 1980 SC 1231,
- (ii) Dr. (Mrs.) Kirti Deshmankar vs. Union of India (UoI) and others, 1991 (1) SCC 104,
- (iii) Seema Kumari Sharma (Mrs) vs. State of H.P. and another, 1998 (9) SCC 128,
- (iv) Dr. A. Rajapandian vs. State of T.N., 2007 (1) M.L.J. 820 (Madras High Court-DB) and
- (v) Premanand vs. The State of Tamil Nadu (1995 (11) MLJ 325 (Madras High Court-DB).

5. On the other hand, the stand taken by the learned Senior Counsel appearing for the learned Standing Counsel appearing for the first respondent-TNPSC is that the submission of Community Certificate along with the OMR Application Form, is mandatory and on failure to submit the same, the case of the candidate cannot be considered against the reserved post. He placed reliance on an unreported decision of a Division Bench of this Court in the case of "R. Bagyaraj vs. TNPSC", W.P.No.18577 of 2008, dated 1.8.2008, wherein appointment pursuant to this very Examination held on 2/3.8.2008, was considered by the Division Bench, which rejected similar plea as was taken by the petitioner of the said case, he having not submitted the Community Certificate along with the Application Form.

Reliance was also placed on another Division Bench decision of this Court in the case of "Dr. M. Vennila vs. Tamil Nadu Public Service Commission", reported in 2006 (3) CTC 449.

6. We have heard the learned counsel appearing for the parties, noticed their rival contentions and perused the Instructions, etc., to candidates issued by the TNPSC along with the OMR Application Form and other records.

7. It is not in dispute that the candidates were to shade Column No.7 of their OMR Application Form if they claim reservation against one or other reserved category. Under Column No.25 of the said Application Form, relating to Check List for production of documents, such candidates are to shade the portion of documents enclosed with such Application Form.

8. So far as the Supreme Court decision in the case of "Charles K. Skaria and others" (AIR 1980 SC 1231) (supra) is concerned, that was a case in which the candidate therein claimed additional marks having passed certain test, but failed to enclose the documents in support of the same at the time of Application Form. The Supreme Court held that a method of convenience of proving possession of a qualification is merely directory and the Prospectus in the said case itself permits the Government to modify the method.

9. Similar was the case relating to "Dr. (Mrs.) Kirti Deshmankar" (1991 (1) SCC 104) (supra). That was the case in which the contesting respondent therein being a Foreign student passed M.B.B.S., Examination, though satisfied all other essential conditions for admission, his selection was challenged on the ground that the concerned respondent of the said case had not obtained

Clearance Certificate from the concerned Ministry. The Supreme Court, in the facts, upheld the admission of such candidate.

10. The aforesaid cases of the Supreme Court are actually not applicable to the present case of the writ petitioner. It is not a question relating to the production of a mark sheet which the candidate passed prior to the submission of the Application Form, or the other one relating to obtaining of Clearance Certificate from the Ministry concerned, and the same are not directly applicable to the present case.

So far as the decision of the Division Bench of the Madras High Court in the case of "Dr.A.Rajapandian" (2007 (1) M.L.J. 820) (supra) is concerned, the same related to signature under each and every page, which connotes the authenticity of the person who certified the accuracy and correctness of the particulars provided and furnished by him.

What is to be determined in the present case is whether the submission of the Community Certificate as per the Instructions, etc., supplied to the candidates by the TNPSC, along with the OMR Application Form, is mandatory or directory.

11. In this regard, it is relevant to refer Clause 1(vi) of the Instructions, etc., to candidates supplied by the TNPSC along with the OMR Application Form, which reads as follows:

"1. HOW TO APPLY

.....

.....

(vi) The filling in of the application form correctly and completely and sending it with all the documents as required in the Commission's "Notification / Advertisement" / Brochure and "Instructions etc. to Candidates" form part of the test for selection. Failure in this regard will entail summary rejection of the application.

(emphasis supplied)

12. So far as Clause 5 relating to "Other Conditions" in the Instructions, etc., supplied to the candidates by the TNPSC along with the OMR Application Form is concerned, in particular, sub-clause (iv), which was relied on by the learned Senior Counsel appearing for the petitioner, but it cannot be read in isolation or part of the same cannot be relied upon, as it has to be read along with the other sub-clause (iii), which are quoted hereunder:

"5. Other Conditions:

....

....

(iii) Any claim by a candidate that he belongs to Scheduled Caste or Scheduled Tribe or Backward Class or Most Backward Class/Denotified Community or that he has obtained a higher or additional qualification made after the submission of an application will not be entertained.

(iv) The claims of the candidates with regard to the date of birth, educational/technical qualifications and community are accepted only on the information furnished by them in their applications. Their candidature, therefore will be provisional and subject to the Commission satisfying itself, about their age, educational/technical qualifications, community etc. Mere admission to the interview or inclusion of name in the list will not confer on the candidates any right for appointment. The candidature, is therefore, provisional at all stages and the Commission reserves the right to reject any candidature at any stage, even after the selection has been made.

.... "

13. From the aforesaid Clauses, it would be clear that the verification of qualification, community etc., can be made prior to the appointment/joining of a candidate, and the TNPSC reserves its right to reject the candidature of any candidate at any stage even after selection has been made, if any of such information given or certificate produced is found to be wrong or forged.

14. Clause 15 in the Instructions, etc., to candidates supplied by the TNPSC along with the OMR Application Form, relates to "Production of evidence for claims made in the Application". Sub-clause (f) therein relates to "Community Certificate". Therein, the candidates have been warned that if the community recorded in the certificate produced by them from the competent authority is not included in the list of such category of the Caste(s), then their cases will be considered only under the "others" (i.e. 'unreserved post' (General Turn) in the present case).

15. From Clause 1(vi) of the Instructions etc., to candidates supplied by the TNPSC along with the OMR Application Form, as it is evident that if the Application Form is not correctly filled up and in support of the statement, documents as required, under the Commission's (TNPSC's) Notification/Advertisement/Brochure and Instructions etc., to candidates, are not sent along with the OMR Application Form by the candidates, the same entails summary rejection and to that extent we hold that non-enclosure of the Community Certificate in support of the claim for

reservation against the post, is mandatory for the purpose of Examination in question (Civil Judge (Junior Division)).

16. It is not in dispute that 201 posts were advertised in the Notification dated 10.5.2008 and certain percentage of posts were reserved for one or other categories, such as SC, ST, BC, etc. It is informed by the learned Standing Counsel appearing for the TNPSC that as per their Guidelines, they call for successful candidates for Interview twice the number of the posts meant for one or other category or against the unreserved post. For such determination as to who are the successful candidates to be called for the Interview against one or other reserved post, for calculation of twice the number of successful candidates of such reserved category, it is essential for the TNPSC to find out as to who belong to such category and the same can be verified on the basis of the claim as was made by the successful candidates of such category, along with the relevant Community Certificate in support of such claim in their OMR Application Form.

Therefore, for such purpose also, it is necessary to submit the Community Certificate along with the OMR Application Form and not at the time or before the Interview, as suggested by the learned Senior Counsel appearing for the petitioner.

We therefore hold that the submission of a Community Certificate along with the OMR Application Form, is mandatory and not directory for the purpose of the present case and in the absence of such Community Certificate, the candidature of the candidate cannot be considered even for the Interview against the reserved category post.

17. Similar view was taken by the Division Bench of this Court in the case of "R.Bagyaraj" (W.P.No.18577 of 2008, dated 1.8.2008) (supra), wherein, this Court rejected the claim of the petitioner therein for appointment against a reserved category he having failed to submit Community Certificate.

18. We find no merits in this case. The Writ Petition is accordingly dismissed. No costs. The Miscellaneous Petition is closed.