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W.P.Nos.27754 and 23316 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.27754 and 23316 of 2021

and

W.M.P.No.24589 of 2021

W.P.No.27754 of 2021:

B.Lalitha

... Petitioner

Vs.

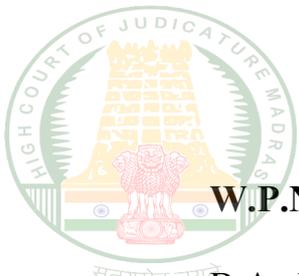
The Secretary to the Government,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent to select the petitioner for the post Assistant Section Officer (Translation in Hindi) by considering the petitioner marks in accordance with law.

For Petitioner : Mr.M.Vijayan
for M/s.Karan and Uday

For Respondent : Mr.R.Bharanidharan
Standing Counsel - TNPSC



W.P.Nos.27754 and 23316 of 2021

W.P.No.23316 of 2021:

B.Aadhirai

... Petitioner

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Vs.

1. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 003.

2. B.Lalitha
(R2 impleaded vide order dt:28.04.2022 in
W.M.P.No.1983 of 2022 in
W.P.No.23316 of 2021

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent herein to consider and pass orders on the petitioner's representation dated 12.10.2021 sent to the respondent's email ID 'contacttnpsc@gmail.com' at 8.23 P.M. and 13.10.2021 in accordance with law and on merits and further direct the respondent herein to consider the petitioner's candidature for the post of Assistant Section Officer (Translation) in Hindi based on the fact of the petitioner holding 1st rank among the five candidates with Hall Ticket No.010010235.

For Petitioner : Mr.V.Ramamurthy

For Respondents : Mr.R.Bharanidharan
Standing Counsel - TNPSC
for R1

R2 - Batta Not Filed



COMMON ORDER

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The question that arises for consideration in these Writ Petitions are whether the conditions imposed under the recruitment notification under which the respective petitioners have applied for the subject post are mandatory or is it only directory.

2. The petitioners in the respective Writ Petitions have admittedly not uploaded the certificates on time as per the deadline fixed under the recruitment notification.

3. The petitioner in W.P.No.27754 of 2021 claims that she could not upload the certificates on or before the deadline on account of she being infected with Covid and that she did not notice the e-mail received from the respondent Commission requesting her to upload the certificates.

4. The petitioner in W.P.No.23316 of 2021 claims that she could not upload the certificates on time on account of the reason that she was unable to open the TNPSC website on 12.10.2021 when she received an e-mail



from the respondent Commission. 12.10.2021 is the deadline fixed under the recruitment notification for uploading the documents.

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5. Both of them claim that they have been provisionally selected for the subject post which is however disputed by the respondent Commission who would claim that they have been provisionally selected only for the next stage of the selection process. The respondent Commission categorically states that the terms and conditions of the recruitment notification will have to be strictly adhered to by any aspirant and the question of relaxation of any condition does not arise.

6. The respective counsels appearing for the respective petitioners drew the attention of this Court to the various documents filed along with the respective Writ Petitions in order to substantiate the case of the respective petitioners.

7. Similarly, learned Standing Counsel appearing for the respondent Commission drew the attention of this Court to the Counter Affidavit filed



by the Commission and would submit that both the petitioners are not entitled for issuance of appointment orders in their respective favour as they have not adhered to the terms and conditions of the recruitment notification.

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8. Learned counsel for the petitioner in W.P.No.27754 of 2021 drew the attention of this Court to a decision of the Honourable Supreme Court in the case of *Dolly Chhanda Vs. Chairman, JEE and Others* reported in **2005 (9) SCC 779** and would submit that as per the said decision, the petitioner is entitled to get an appointment order for the subject post in his favour as she is possessing the qualifications required for the subject post excepting for the fact that she did not upload the certificates on or before the deadline fixed by the respondent Commission though she had submitted the said certificates pursuant to the interim directions given by this Court thereafter. He referred to the various paragraphs of the aforesaid decision in support of his contention.

9. Learned counsel for the petitioner in W.P.No.23316 of 2021 drew the attention of this Court to the communication received from the respondent Commission on 12.10.2021 and would submit that the petitioner



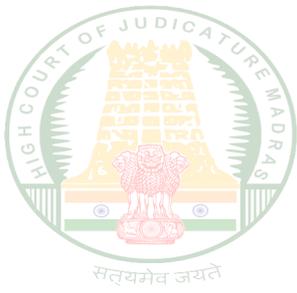
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received the said communication only at 11.02 a.m. and immediately thereafter, the petitioner had made an attempt to upload the certificates on the same date but, only due to the reason that the website of the respondent Commission could not be opened on that date, the petitioner did not upload the certificates on or before 12.10.2021. He would also submit that immediately on the next date, she sent a communication to the respondent Commission that she was unable to upload the certificates on or before 12.10.2021 due to the reason that the website of the Tamil Nadu Public Service Commission could not be opened on 12.10.2021.

10. Learned Standing Counsel appearing for the respondent Commission drew the attention of this Court to the following Authorities rendered by the Honourable Supreme Court:

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

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***.



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11. Relying upon the aforesaid Authorities, learned Standing Counsel appearing for the respondent Commission would submit that unless and until the recruitment notification provides for the power of relaxation, the question of granting relaxation to any aspirant with regard to the terms and conditions they have to fulfill cannot be granted by this Court.

Discussion:

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



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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."



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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 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.

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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 follows:

a) ***Sanjay K.Dixit and Others Vs. State of Uttar Pradesh and Others***

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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



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W.P.Nos.27754 and 23316 of 2018

(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



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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 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:**



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"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.



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19. Accordingly, these Writ Petitions are dismissed. No Costs.

Consequently, the connected Writ Miscellaneous Petition is closed.

15.12.2022

Index : Yes/No
Speaking Order : Yes / No
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To

The Secretary to the Government,
Tamil Nadu Public Service Commission,
Chennai - 600 003.



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ABDUL QUDDHOSE. J.,

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