

Case relating to Challenging Instructions etc. to candidates:

Parties : Dr. A. Rajapandian Versus State of Tamil Nadu rep. by its Secretary Department of Animal Husbandry & Others

Court : High Court of Judicature at Madras

Case No : W.P.Nos.37308 of 2005, 37310, 37043, 37098, 37148, 37149, 37169, 37170, 37178, 37187, 37188, 37191, 37192, 37194, 37197, 37224, 37227, 37228, 37229, 37230, 37232, 37234, 37237, 37239, 37282, 37283 of 2005

Judges: THE HONOURABLE CHIEF JUSTICE MR. A.P. SHAH & THE HONOURABLE MR. JUSTICE K. CHANDRU

Appearing Advocates : For the Petitioner: T.R. Rajagopalan, Senior Counsel for U.M. Ravichandran, H.S. Mahomed Rafi, M. Velmurugan, Advocates. For the Respondents: R1, Raja Kalifulla, Government Pleader, R2 & R3, R. Sureshkumar, Standing Counsel for T.N.P.S.C.

Date of Judgment : 07-11-2006

Head Note :-

Constitution of India – Article 226 – Service –Appointment - Post of 'Veterinary Assistant Surgeon – No Enclosure of Certificates - The earlier advertisement - specifically requires the production of the Registration Certificate issued by the Veterinary Council. No such requirement is stipulated in the present Notification/Advertisement. More over, it is not disputed by the Commission that the petitioners are duly registered Veterinary Assistant Surgeons under Tamil Nadu Veterinary Council prior to the date of Notification/Advertisement. The non-enclosure of the Registration Certificate issued by the Veterinary Council, which was not specifically required to be produced along with the application either in the Notification/Advertisement or in the Information Brochure or in the Check List cannot be put against the petitioners for rejecting their applications - If there was any confusion created on the minds of the candidates, the blame squarely lies on the TNPSC. Far from helping the candidates, it had made mess for any reasonable candidate to understand as to what was their exact requirement. The TNPSC could have very well issued one simple and compendious booklet containing all these details rather than making the candidate to refer to several documents - When as many as over 100 candidates have committed the so-called mistake the resultant mistake cannot be solely attributed to the candidates alone - Batch of writ petitions is liable to be allowed.

Para 19, 20 & 23

Comparative Citation:

2007 (1) MLJ 820: 2006 (5) CTC 529

Judgment :-

(Petitions under Art.226 of the Constitution of India, praying for a Writ of Mandamus, directing the 2nd and 3rd respondents to process the petitioners' applications for the written

examination and oral test for selection of the post of Veterinary Assistant Surgeon (Direct Recruitment) in the Tamil Nadu Animal Husbandry Services for the year 2005-06.)

Common Order:

A.P. Shah, C.J.

As these writ petitions involve common question of law and facts, they are being disposed of by this common judgment and order.

2. In August, 2005, the Tamil Nadu Public Service Commission (in short 'the Commission') invited applications in respect of appointments to the post of 'Veterinary Assistant Surgeon (Direct Recruitment) in the Tamil Nadu Animal Husbandry Services for the year 2005-06. The total number of vacancies specified in the notification was 250. Clause 6 of the Notification prescribed the following qualifications:

"6. QUALIFICATION:

Candidate should possess the following or its equivalent qualification on the date of the Notification viz. 05-08-2005:

B.V.Sc. Degree of any University or Institution recognised by the University Grants Commission for the purpose of its grant; and

Must be a Registered Practitioner within the meaning of Tamil Nadu Registration of Veterinary Practitioners Act 1957 (Tamil Nadu Act XXI of 1957)

... .."

Clause 12 of the Notification enumerated the list of enclosures to be sent along with the application. It was further informed that the selection will be made in two successive stages, viz. written examination and oral test in the shape of an interview. The total marks obtained by the candidates in the written examination and oral test will be taken together for making the final selection subject to the rule of reservation. The last date for submission of the filled up application was fixed as 9th September, 2005 and the date of written examination was fixed as 20th November, 2005.

3. With reference to the above notification, 1390 candidates had applied to the Commission for this direct recruitment. Out of 1390 applications, a total number of 942 candidates were found eligible to take up the examination for the recruitment and the applications of 448 candidates were found liable for rejection for one or other reasons and therefore rejected.

4. The present petitioners, who are 154 in number, either apprehending rejection of their applications or whose applications have been rejected, have filed these petitions seeking a direction to the Commission to process their applications for the written examination and oral

test for selection of the post of Veterinary Assistant Surgeon (Direct Recruitment) in the Tamil Nadu Animal Husbandry Services for the year 2005-06.

5. By interim orders passed by this Court, the petitioners were permitted to write the examination held on 22nd November, 2005 subject to the outcome of the writ petitions.

6. The petitioners in their writ petitions have contended that rejection of their applications on technical reasons such as "OMR Application not signed", "Declaration Column not signed", "Non Production of Veterinary Council Registration Certificate" is arbitrary, unreasonable and in violation of the principles of natural justice.

7. It is seen from the counter affidavit filed on behalf of the Commission that 448 applications were rejected for the reasons viz. 'OMR Application not signed', 'Declaration Column not signed', 'Photo Identity not signed', 'Registration Certificate of Veterinary Council not produced', 'No evidence of date of birth' etc. In so far as the present petitions are concerned, as per the information furnished by the Commission, 68 applications were rejected on the grounds of not signing the OMR Application and/or not signing the Declaration Column or not signing Photo Identity, and the rest of 86 applications were rejected on the ground of non-production of Veterinary Council Registration Certificate.

8. We will first take up W.P. No.37309 of 2005 batch of writ petitions. In this batch of writ petitions, in all 68 applications were rejected on the grounds of 'OMR Applications not signed' and/or 'Declaration Column not signed', and/or Photo Identity not signed. We hasten to add that in some of these cases, the applications were also rejected on the ground of 'Non Production of Registration Certificate of Veterinary Council'.

9. Mr. H.S.Mohamed Rafi, learned counsel appearing for the petitioners, submitted that though all the columns in the application were duly filled in by the petitioners, the reason for not affixing their signatures under 'OMR Application' and/or 'Declaration Column', etc. was due to ambiguous formatting of the application form. The failure to sign in the OMR Application and/or the Declaration Column would not in any way affect the validity of the applications since the applicants had signed the application at all other places. The omission to sign the 'OMR Application' and/or the 'Declaration Column', etc. was only a bona fide mistake and, in any event, such omission is only an irregularity which can be rectified at any stage of the recruitment. The rejection of the applications on this ground is too technical, arbitrary, unjust and unreasonable.

10. On the other hand, Mr.R.Suresh Kumar, learned counsel appearing for the Commission, submitted that paragraph 17 of the Commission's 'Instructions, etc. to Candidates', which was supplied along with the application form, makes it clear that the applications which are not

signed will be considered defective and will be summarily rejected. He submitted that pages 13 and 14 of the 'Information Brochure' supplied along with the application form gives all the details as to how the application is to be filled in. A specimen filled-in OMR Application form was also provided in the Information Brochure to facilitate the candidates to fill in the OMR Application. The details mentioned in the notification/advertisement and instructions found in the form of Information Brochure are mandatory. According to him, the application without signature of the applicant has no effect at all and it lacks authenticity and therefore, the Commission is justified in rejecting the applications of the petitioners. In support of his submission, learned counsel relied on the Division Bench judgment of this Court in *Dr. M. Vennila v. Tamil Nadu Public Service Commission* (2006 (3) CTC 449).

11. In *Dr.M.Vennila's* case, the Division Bench has held as follows: -

"13. In addition to the same, all the candidates were supplied specimen application form duly filled up. A perusal of the filled in specimen form makes it clear that where and in how many places the applicant has to sign. Apart from this, we also verified all the columns in the application form. We are satisfied that the language used and the columns given in the application form are very clear and there is no ambiguity in the columns of application regarding the places where the applicant has to subscribe his/her signature.

14. As rightly pointed out by the learned Advocate General, the insistence upon signature under each and every page has its own significance. Signature connotes the authenticity of the person who certifies as well as the accuracy and correctness of the particulars provided and furnished by him. In such circumstances, we are of the view that non-signing by the applicants at page 2 of the application form has rendered the particulars furnished by them unauthenticated and the application could not be considered as a valid application. The respondent is fully justified in arriving at a conclusion that the particulars furnished by the petitioners without signature are construed as being not authenticated.

15. As rightly pointed out, the filled in application must be in order and intact in all aspects and before filling up the application form, the applicants are supposed to go through the notification, instructions, etc. to candidates, information brochure and OMR application form properly in order to ensure that the particulars and information which are required to be furnished are duly furnished and to see that the documents are enclosed along with the application form as per requirements."

12. We have gone through the said judgment and we think there is no scope for the petitioners in this batch to convince us to take a different view.

13. In the light of the decision of the Division Bench, it is clear that the Commission was justified in rejecting the applications of the petitioners for not signing the OMR application and/or the declaration column, etc. This batch of writ petitions, numbering 68, is, therefore, liable to be

dismissed.

14. In the second batch of writ petitions, numbering 86, the issue is whether the Commission was right in rejecting the applications on the ground of non-production of Veterinary Council Registration Certificate. We are of the view before the earlier Division Bench a similar question never arose for its consideration.

15. In this connection, it will be necessary to refer to Clause 12 of the Notification/Advertisement which enumerated the list of enclosures to be sent along with application. Clause 12 reads as follows:

"12. LIST OF ENCLOSURES TO BE SENT ALONG WITH APPLICATION:

The candidates should enclose all the copies of certificates mentioned in para 4 of Information Brochure, under Part III along with a Demand Draft to the value of Rs.125/-(Rupees One Hundred and twenty five only) unless exemption of fee is claimed. Original Certificates should not be sent. Those applying Online shall also send the copies of certificates as required in the Instructions.

Note: - The applications received without the copies of certificates will be rejected." (emphasis supplied)

In Part II of the Information Brochure, a specimen of the filled in application is given at page No.13, wherein at the bottom of the right hand side of the first page the check-list for production of documents is set out. About 12 types of documents alone are required to be submitted along with the application form which are as follows:

1. Demand Draft
2. Date of birth evidence
3. SSLC/HSC/Diploma/Degree/PG - Evidence of educational qualification
4. Community Certificate
5. Conduct Certificate
6. Fitness Certificate
7. PH Certificate
8. Destitute Widow Certificate
9. No Objection Certificate
10. Identification Certificate
11. Practical Experience Certificate
12. Evidence for the extra-curricular activities

16. Mr. T.R. Rajagopalan, learned senior counsel appearing for the petitioners in this batch of cases strenuously submitted that the petitioners had in fact disclosed all the required information and had also enclosed all the required documents that are stipulated in the Notification/Advertisement, Information Brochure, Check List. Neither the Notification/Advertisement nor the Check List in part II of the Information Brochure nor the List of Enclosures vide Clause 4 in Part III of the Information Brochure require the candidates to

enclose the Veterinary Council Registration Certificate. Learned senior counsel submitted that the applications were invited only from the eligible registered veterinary medical practitioners. There is no specific requirement about the enclosure of the Veterinary Council Registration Certificate. Had the Commission specifically mentioned this in the Notification/Advertisement or in the Information Brochure or in the Check List of the documents enclosed, the petitioners would have enclosed the same. The non-enclosure of Veterinary Council Registration Certificate is neither wilful nor deliberate. Learned senior counsel submitted that all the petitioners are admittedly the registered candidates of the Veterinary Council. The Commission was therefore not right in rejecting their application on the ground of non-production of Veterinary Council Registration Certificate.

17. Mr.Suresh Kumar, learned counsel appearing for the Commission, however, submitted that Clause 11(2) of the Instructions, etc. to the Candidates, supplied along with the application clearly stipulates that candidates applying for the posts for appointment to Veterinary Assistant Surgeon ought to have registered their names with the Tamil Nadu Veterinary Council before the date of the Commission's notification for appointment and the copy of the Registration Certificate should be enclosed along with other documents evidencing their qualification. Learned counsel submitted that

Dr.M.Vennila's case (cited supra) covers this batch also. Learned counsel submitted that nearly two-thirds of the applicants have submitted their Registration Certificate issued by the Veterinary Council. Therefore, the non-production of the Registratio Certificate by the petitioners cannot be said to be a bona fide mistake and the Commission was therefore justified in rejecting their applications for want of Registration Certificate.

18. We find considerable substance in the submissions of Mr.T.R.Rajagopalan. In the Notification/Advertisement, it is specifically stated in Clause 12 of the Instructions, etc. to the Candidates that the candidates should enclose all the copies of certificates mentioned in para 4 of Information Brochure under Part III along with a Demand Draft to the value of Rs.125/-. Paragraph 4 in Part III of the Information Brochure contains the List of Enclosures. As per this list, twelve documents are required to be furnished along with the application. Item 13 covers other special documents, if any, specified in the Advertisement. The Registration Certificate issued by the Veterinary Council does not find a place in the twelve documents mentioned in paragraph 4. Even the Notification/Advertisement does not require the production of the Registration Certificate issued by the Veterinary Council. There is no dispute that that the petitioners have complied with all required formalities as stipulated in the Notification/Advertisement, Information Brochure, Check List and have also enclosed all the required documents as stipulated by the Commission. It is true that the Instructions, etc. to the Candidates mentions that the registration with the Councils is a pre-condition, and requires the production of the registration certificate. But a reading of the notification with paragraph - 4 of the information brochure creates an impression that only 13 documents mentioned in

paragraph-4 are required to be furnished along with the application.

19. It is pertinent to note that the earlier advertisement, a copy of which is produced at Page No.1 of the paper book, specifically requires the production of the Registration Certificate issued by the Veterinary Council. No such requirement is stipulated in the present Notification/Advertisement. More over, it is not disputed by the Commission that the petitioners are duly registered Veterinary Assistant Surgeons under Tamil Nadu Veterinary Council prior to the date of Notification/Advertisement. The non-enclosure of the Registration Certificate issued by the Veterinary Council, which was not specifically required to be produced along with the application either in the Notification/Advertisement or in the Information Brochure or in the Check List cannot be put against the petitioners for rejecting their applications.

20. If there was any confusion created on the minds of the candidates, the blame squarely lies on the TNPSC. Far from helping the candidates, it had made mess for any reasonable candidate to understand as to what was their exact requirement. The TNPSC could have very well issued one simple and compendious booklet containing all these details rather than making the candidate to refer to several documents. Starting from paper notification, application, instructions to candidate, information brochure and finally a misleading check list in the OMR application makes it a jigsaw puzzle. When as many as over 100 candidates have committed the so-called mistake (which accounts for almost 10% of the total applicants), the resultant mistake cannot be solely attributed to the candidates alone. Unlike the previous years, paper notification, the requirement for production of the registration certificates was omitted in the present notification and there is no satisfactory explanation from the TNPSC for such omission. Further, in the check list found in the OMR application, again there is significant omission to include the requirement for production of a Registration Certificate.

21. We are of the view that in the above backdrop of the case, no such contingency arose before the earlier Division Bench and hence, reliance placed upon the same by the counsel for TNPSC has relevance. It is seen from the said decision, neither in the summing up of submissions of various counsels made before the earlier Division Bench as noted in paragraph 9 of the said decision (cited supra) nor such an issue was framed by the earlier Division Bench found in paragraph 16 and such an issue never arose for its consideration.

22. In this context, it is significant to note an observation made by a Division Bench of this Court vide its decision reported in 1995 (II) M.L.J. 325 (V.Premanand vs. The State of Tamil Nadu). The Bench held in paragraph 5 of the judgment as follows:

"It must be pointed out that Clause 13.5 only prescribed the procedure in order to eliminate persons who do not belong to that category, to take undue advantage. As long as it is not in dispute that the petitioner belongs to that category of children born of intercaste marriage

between S.C. / S.T. and Forward Community and in addition to this, he was able to produce the certificate before the application was scrutinised for admission, rejection of such application amounted to giving greater value to the procedure than to the substantive right. The procedure is intended to facilitate enforcement of substantive right and not to defeat the substantive right. Procedure is hand-maid of justice and not to defeat justice." (Emphasis supplied)

The above ruling shows that the right to selection is determined by the fact that the candidate belonged to that category and not by the certificate, which was only a piece of evidence.

23. Consequently, this batch of writ petitions is liable to be allowed. Since these candidates have taken the examinations under the orders of this Court, there will be no difficulty for the TNPSC to publish their results along with other candidates and proceed with the selection process immediately. Considering that the issue had taken almost two years, it is expected that the TNPSC must act expeditiously and in any event, complete the process of selection within a period of three months from today.

24. It is reported by the learned counsel for the Commission that in this batch of writ petitions, two applicants viz. petitioner in W.P. No.37376 of 2005 and petitioner in W.P. No.37530 of 2005 did not appear for the examination, though they were permitted to appear by the interim orders of this Court. These two writ petitions are liable to be dismissed.

25. In the result, W.P. Nos.37308, 37308, 37310, 37043, 37098, 37148, 37149, 37169, 37170, 37178, 37187, 37188, 37191, 37192, 37194, 37197, 37224, 37227, 37228, 37229, 37230, 37232, 37234, 37237, 37239, 37282, 37283, 37284, 37296, 37303, 37314, 37317, 37318, 37319, 37320, 37324, 37326, 37327, 37330, 37331, 37334, 37335, 37339, 37342, 37343, 37346, 37347, 37364, 37367, 37371, 37375, 37377, 37407, 37422, 37423, 37424, 37455, 37494, 37496, 37499, 37501, 37502, 37503, 37504, 37506, 37508, 37509, 37511, 37512, 37513, 37514, 37515, 37518, 37519, 37520, 37521, 37523, 37524, 37526, 37527, 37529, 37546, 37551, 37555 and 37611 of 2005 are allowed.

W.P. Nos.37309, 37311, 37029, 37176, 37177, 37189, 37190, 37195, 37196, 37225, 37226, 37231, 37233, 37235, 37236, 37238, 37240, 37291, 37299, 37313, 37315, 37316, 37322, 37323, 37325, 37328, 37329, 37332, 37333, 37336, 37337, 37338, 37340, 37341, 37344, 37345, 37348, 37363, 37365, 37366, 37368, 37369, 37370, 373372, 37373, 37374, 37376, 37378, 37379, 37380, 37381, 37401, 37493, 37495, 37497, 37498, 37505, 37507, 37510, 37516, 37517, 37522, 37525, 37528, 37530, 37550, 37556, 37612, 37613 and 37614 of 2005 are dismissed.