

**State Vs. Koya**

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**Court :** Chennai

**Decided On :** Jul-23-2014

**Judge :** M.Venugopal

**Appellant :** State

**Respondent :** Koya

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

12. 08.2009 C O R A M THE HONOURABLE Mr.JUSTICE S.NAGAMUTHU Writ Petition No.12610 of 2008 and M.P.Nos. 1 to 3 of 2008 --- C.Stella Mary ..Petitioner -Vs- 1.Tamilnadu Public Service Commission, Omanadhurar Government Estate, Annasalai, Chennai 600 002, Represented by its Secretary 2.Deputy Secretary, Tamilnadu Public Service Commission, Omanadhurar Government Estate, Annasalai, Chennai 600 002, ..Respondents Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari and Mandamus to call for the records of the 2nd respondent made in his Order Memorandum No.6764/RID/2007 dated 16.04.2008 and quash the same and consequently direct the respondents 1 and 2 to consider the case of the petitioner for appointment to the post for the Combined Subordinate Service for which the petitioner took her CSSC I (Group II ) Examination on 17.11.2007 and attended interview on 31.03.2008 under the Destitute Widow Category as per the Order of Merit. For petitioner ... Mr.S.Silambanan,Senior Counsel for

## ORDER

The petitioner is a Destitute Widow. Her husband died on 28.09.2006. She has got a daughter aged 11 years old. The respondent Tamilnadu Public Service Commission called for applications for the Combined Subordinate Service Examination-I (CSSC-I) Group II on 30.06.2007 as per advertisement No.115.

2. The petitioner applied for the same under destitute widow category on 28.07.2007. But, while submitting her application, since, the petitioner did not readily have destitute widow certificate obtained from the competent authority, she submitted a letter along with the application, intimating the respondent that she would submit the destitute widow certificate as soon as she gets the same from the competent authority. She had already applied for destitute widow certificate. Her application was entertained by the respondent Commission and Registration Number was assigned to her.

3. Subsequently, the petitioner obtained destitute widow certificate dated 31.07.2007 on 02.08.2007 and immediately submitted a copy of the same to the respondent. Thereafter, she was allowed to take up the written examination held on 17.11.2007. The results were declared on 21.02.2008, wherein, it was declared that the petitioner had passed the written examination and qualified for interview. On 25.02.2008, the respondent Commission sent a letter to the petitioner calling upon her to send a copy of the hall ticket along with a copy of destitute widow certificate. The petitioner immediately complied with the same. Thereafter, by memo No.2736/OTD-B2/2007 dated 05.03.2008, the respondent sent a call letter for interview to be held on 31.03.2008. The petitioner was asked to produce all the original certificates including destitute widow certificate. Accordingly, the petitioner appeared for the interview and produced all the certificates. On perusing the destitute widow certificate, the Officers of the respondent Commission were satisfied and they retained the original destitute widow certificate with them for office purposes.

4. The petitioner further claims that she was under the impression that she would be considered under the destitute widow quota and selected. But, the respondent Commission sent a memorandum No.6764/RID/2007 dated 16.04.2008 informing the petitioner that her claim for consideration under the destitute widow category was not accepted, since, the destitute widow certificate sent by her on 24.10.2007 was received by the respondent after the last date for receipt of the application. The said letter is challenged in this writ petition with a consequential prayer for a direction to the respondents 1 & 2 to consider the case of the petitioner for appointment to the post for the Combined Subordinate Service CSSC-I (Group II) under the destitute widow category as per the order of merit.

5. This court by an interim order dated 20.05.2008 directed the respondents to keep one post vacant and this court is now informed that accordingly one post is kept vacant.

6. In the counter filed by the respondents, it is stated that as per Rule 21(bb) of the Tamil Nadu State and Subordinate Rules, every candidate claiming to be a 'Destitute Widow' shall produce a certificate from the Revenue Divisional Officer (RDO) or the Assistant Collector or the Sub Collector concerned. It is further stated that such a Certificate is insisted even in the OMR application. The Counter further proceeds to say that it is essential that the petitioner should have produced a copy of the Destitute Widow Certificate along with the application. Since the petitioner did not enclose a copy of the Destitute Widow Certificate along with her application and since, the same was received in the respondent office approximately after one month from the last date of receipt of applications, the said certificate cannot be accepted and she cannot be considered under the said category. It is stated that as per Column 25(12) of the OMR application, the candidates are required to submit attested Xerox copies of the documents with the application and since, the same has not been done, the impugned order came to be issued. Thus according to the respondents, there is no illegality in the impugned order requiring interference at the hands of this Court.

7. The learned Senior Counsel appearing for the petitioner would submit that submission of the application in this case was made in time and the same was

accepted and there is no clause anywhere in the Information Brochure that delayed submission of copies of certain documents would not be entertained by the Commission. He would further submit that submission of copies of documents for a particular claim is purely procedural and so it is immaterial whether the same was submitted along the application or subsequently.

8. But the learned counsel appearing for the respondents would stoutly oppose the writ petition. According to her, non-submission of attested Xerox Copies of the certificates along with the application would amount to submission of incomplete application. She would rely on a Judgment of a Full Bench of Punjab & Haryana High court in Rahul Prabhakar Vs. Punjab Technical University, Jalandhar reported in AIR1998 Punjab and Haryana 18. Relying on paragraphs 17 and 18, the learned counsel would submit that since the copy of the destitute widow certificate was produced beyond the cut-off date for submission of the application, the same cannot be accepted. She would further submit that submission of copies of relevant documents is not merely procedural, but it is substantive. Therefore, she prays for dismissal of the writ petition.

9. I have considered the rival submissions.

10. Indisputably, the petitioner is a destitute widow. Her husband died few months before the submission of application to the Tamil Nadu Public Service Commission. The further fact remains that she made an application for destitute widow certificate within a reasonable time after the demise of her husband. After the submission of application to the Tamil Nadu Public Service Commission, as soon as the certificate was received, she submitted a copy of the same. In the judgment relied on by the learned counsel for the respondents, it was not a point for consideration before the Full Bench as to whether non-submission of copies of the relevant documents along with the application would dis-entitle the applicant to claim the benefits arising out of the said certificate. That was a case where rejection of application submitted beyond the cut-off date was examined. After having considered the terms and conditions in the Information Brochure, the Full Bench held that submission of the application beyond the cut-off date cannot be accepted and the rejection is valid. The same view has been taken by this court

also in several judgments. But the facts of the present case are distinguishable and peculiar also.

11. Here, admittedly, the application was submitted in time along with a covering letter requesting to permit the petitioner to submit the destitute widow certificate as soon as it is received from the competent authority. Simply because such certificate was not submitted along with the application, it would not be in the interest of justice to reject her claim. The object of creating reservation to Destitute Widow is only to help such widows to rescue them from destitution. On a technical ground, like the one which was taken in the impugned order, if such a claim is rejected, I am sure, it will certainly defeat the very object of such reservation.

12. The crucial factor to be considered in such a case, is whether on the crucial date viz., on the date of making application, the candidate was a destitute widow or not. Production of certificate is only to prove the said fact. Whether it is produced along with the application or some time later, is immaterial. If such a certificate is produced before the list of candidates is finalised for interview, in my considered opinion, that would serve the purpose and would not prejudice the cause of the other candidates.

13. Though no judgment on this issue, laying down the ratio was cited at the bar in support of the contentions of the petitioner, I could find two such judgments of the Hon'ble Supreme Court. In the first one (Charles K. Skaria and others Vs. Dr.C.Mathew and others reported in (1980) 2 Supreme Court Cases 752, the Hon'ble Supreme Court had occasion to examine a similar question. That was a case relating to awarding of 10% marks for possessing Diploma in relevant subject for admission to post-graduate medicine course. According to the prospectus, copies of diploma certificates should be produced along with the application. But, three such diploma holders did not produce copies of the certificates along with the application, but, they produced it later. But they were selected. The High Court set aside the selection on the ground that the Diploma certificates were not produced along with the application. While setting aside the order of the High Court, the Supreme Court held as follows:- 20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10

marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course?. That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say : (4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or specialities.

13. Certificates to be produced:- In all cases true copies of the following documents have to be produced:- (K) Any other certificates required along with the application. This composite statement cannot be read formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence. ....

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and nor man for law.

Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and government orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guidelines therein. Once this position is plain the additional of special marks was basic justice to proficiency measured by marks. "

14. In the second one, (Dolly Chhanda Vs. Chairman, Jee and others reported in (2005) 9 Supreme Court Cases 779), while considering an identical question, after referring to Charles K. Skaria's case, the Hon'ble Supreme Court held as follows:-  
9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.06.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is unjust and illegal. "

15. Applying the ratio laid down in the above judgments to the facts of the case, one can be sure that it is not appropriate for the respondent to stick on to a

technicality which is not only merely procedural but it defeats the very object sought to be achieved. As held by the Hon'ble Supreme court, what is crucial is as to whether as on the last date for submission of application the petitioner was a destitute widow or not. Yes, is the incontrovertible answer to the said question.

16. Admittedly, long before the written examination, the petitioner submitted a copy of the destitute widow certificate. Therefore, having regard to the very object of reservation made for destitute widows, and having regard to the ratio laid down by the Hon'ble Supreme Court, in my considered opinion, in the case on hand, the reason stated in the impugned order for rejecting the claim of the petitioner for being considered under the reserved quota for destitute widows is not at all sustainable and therefore, the same is liable to be quashed.

17. In view of the above, the writ petition is allowed, the impugned order is set aside and the respondents are directed to consider the petitioner's claim under the destitute widow quota and issue further orders strictly in accordance with law. In any event, the said exercise shall be completed within four weeks from the date of receipt of a copy of this order. The petitioner is at liberty to submit a copy of this order to the Tamil Nadu Public Service Commission directly. No costs. Consequently, connected M.P.Nos.1 to 3 are closed. nvsri To 1.The Secretary, Tamilnadu Public Service Commission, Omanadhurar Government Estate, Annasalai, Chennai 600 002, 2.The Deputy Secretary, Tamilnadu Public Service Commission, Omanadhurar Government Estate, Annasalai, Chennai 600 002

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