

R.Vidhya Vs. the Secretary,

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Court : Chennai

Decided On : Aug-22-2014

Judge : S.Nagamuthu

Appellant : R.Vidhya

Respondent : The Secretary,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:22.08.2014 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU W.P.(md).No.16299 of 2012 R.VIDHYA ..Petitioner Vs THE SECRETARY, TAMILNADU PUBLIC SERVICE COMMISSION COMMERCIAL TAX ANNEXED BUILDING, NO.1 GREMS ROAD, CHENNAI - 06..Respondent Prayer This petition is preferred under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent to consider and appoint the petitioner for the post as in Combined Subordinate Service Examination - 1 (examination/service code no.004) under the category of post graduate MBC/DC and Female.

!For Petitioner :Mr.Rajaraman For respondents :Mr.K.P.Krishnadoss for TNPSC :

ORDER

The Tamil Nadu Public Service Commission issued advertisement No.258, calling for applications for direct recruitment to the posts included in combined subordinate services Examination-I (examination/service code No.004).The

petitioner submitted her application.

The selection process consisted of two successive stages namely, written examination followed by oral test.

The petitioner participated in the written examination and thereafter she was called for interview.

At that time, she produced her community certificate to show that she belongs to Most Backward Community.

But, in the final selection list, she was not selected on the ground that the petitioner had not annexed the community certificate along with her application.

Aggrieved over the same, the petitioner is before this Court with this writ petition, seeking a writ of mandamus to direct the respondent to consider her for the said post under the Most Backward Community/Deserved Category for Female.

2. In the counter affidavit filed by the respondent, inter alia, it is stated that in her application, the petitioner had rightly claimed that she belonged to MBC/DC Category.

Based on the marks obtained by her in the written examination, following the rules of reservation of appointments, qualifications, age and vacancies, the petitioner was summoned for oral test under Most Backward Community (W) Category.

At the time of certificate verification, it was found that she had not produced the community certificate along with her application and in the column No.26 of the application, showing the enclosures of documents also, she had not shaded box No.3 relating to community certificate.

However, the petitioner was permitted to attend the oral test on 03.07.2012, but the result was withheld.

It is further stated in the counter that paragraph No.15 of the instructions of the candidates states that candidates should enclose xerox copies of the certificates duly attested by Group-A/Group-B Officers along with application.

Therefore, as per instruction etc to the candidates and as per Office Order No.59 & 60, dated 07.11.2006, the candidate has to be treated as 'others'.

Therefore, the claim of the candidate as Most Backward Community was not considered and she was treated under the category of 'others'.since the petitioner had not reached the zone of admission to oral test counselling, under General Term category.

The petitioner secured only 229.50 marks in the written examination.

Since the cut off marks for General Category is 234, she was not considered for selection for the appointment.

3.I have heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent and I have also perused the records carefully.

4.The learned counsel for the petitioner submitted that the petitioner rightly claimed in her application that she belonged to MBC/DC Category.

The application was accepted and the petitioner was treated as the candidate belonging to MBC/DC Category.

That is why she was called for interview, based on her marks.

It is the further contention of the learned counsel for the petitioner that a xerox copy of the community certificate was, in fact, annexed to the application, but by inadvertence, it was failed to be mentioned in the application.

At any rate, the learned counsel for the petitioner submitted that there is no dispute even now that the petitioner belongs to MBC/DC Category.

The learned counsel further submitted that even assuming for a moment that community certificate was not annexed to the application, on that score, the petitioner's claim that she belongs to MBC/DC should not have been rejected.

In this regard, the learned counsel relies on a Division Bench judgment of this Court in Premanand Vs The State of Tamil Nadu, reported in 1995 2 MLJ.

5. That was a case, where a candidate, born to the parents, who had entered into inter-caste marriage between the scheduled caste and forward community, failed to submit the relevant certificate along with the application.

That application was therefore rejected.

This question was examined by the Division Bench in the Premanand's case.

In para No.5 of the said judgment, the Division Bench has held 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 scrutinized for admission, rejection of such application amounted to giving greater value to the procedure than to the substantive right.

The procedure is intended facilitate enforcement of substantive right and not to defeat the substantive right.

Procedure is hand-maid of of justice and to defeat justice.

Therefore, the Selection Committee acted arbitrarily when it rejected the application, even though it had before it the certificate produced by the petitioner to the effect that he satisfied the category of children born of inter-caste marriage between S.C/S.T and Forward Community.

As long as the application was filed in time and the applicant was able to satisfy the requirement of production of certificate from the appropriate authority, before his application was considered for selection, it was not at all open to the Selection Committee to refuse to consider the application only on the ground that such a certificate had not been produced along with the application.?

6. Thereafter, in yet another case before a Division Bench, a similar question came up for consideration in Dr.A.Rajapandian Vs The State of Tamil Nadu, reported in 2006 (5) CTC529 That was the case where, the rejection of application on the ground that OMR application had not been signed or declaration column had not been signed or Veterinary Council Registration Certificate had not been produced, was under challenge.

The respondent therein had rejected the applications of the candidates on either one or more of the above grounds.

While examining the question whether the non- production of Veterinary Council Registration Certificate would be a ground to reject the very application itself, the Division Bench had occasion to take note of the Premanand's case.

After having extensive discussion about the scope of the issue, in paragraph No.22, after taking into account paragraph No.5 of V.Premanand's case, the Division Bench has held as follows: 22.In this context, it is significant to note an observation made by a Division Bench of this Court vide its decision in V.Premanand versus The State of Tamil Nadu, 1995 (2) MLJ325 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 scrutinized for admission, rejection of such application amounted to giving greater value to the procedure than to the substantive right.

The procedure is intended facilitate enforcement of substantive right and not to defeat the substantive right.

Procedure is hand-maid of of justice and to defeat justice.

(Emphasis supplied) 7.The above judgment 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.

Thus, in that case, the Division Bench has reaffirmed the view taken in V.Premanand's Case and has held that if someone failed to annex certain certificates along with the application, that would not be a ground for rejection of the application itself.

8. When I was sitting single in the Principal Bench, a similar case arose for consideration in C.Stella Mary Vs Tamil Nadu Public Service Commission, reported in 2009 (6) MLJ1211. In that case, a destitute widow certificate had not been submitted by the candidate along with application.

That application was rejected by the Tamil Nadu Public Service Commission.

Relying on the above judgment and two judgments of the Honourable Supreme Court in Charles K. Skaria and others Vs Dr.C.Mathew and others, reported in AIR 1980 SC1230 and another case in Dolly Chanda vs Chairman, Jee, reported in (2005) 9 SCC779, I held that non-production of the certificate along with application cannot be a ground to reject the application.

This judgment has been implemented and the same has become final.

9. Subsequently, more or less a similar issue has come up for consideration before a Division Bench, to which I was a party, in the Secretary, Tamil Nadu Public Service Commission vs M.Chitra.

That was a case, where, a candidate did not submit her community certificate, obtained from the competent authority along with her application.

The application of the candidate was entertained and she was allowed to participate in the written examination.

She was also provisionally selected and called for certificate verification.

At the time of certificate verification, the candidate could not produce her community certificate, since her request for issuance of community certificate was still pending before the Revenue Divisional Officer.

She had explained to the authority the peculiar circumstances, under which she had been placed.

At last, she got the community certificate and produced the same.

But the said certificate was not in the prescribed format as prescribed by the Tamil Nadu Public Service Commission.

Hence, she was not selected and she was informed by the Tamil Nadu Public Service Commission that her provisional selection was cancelled by the Tamil Nadu Public Service Commission.

That was challenged before a Single Judge and the challenge was allowed and the Tamil Nadu Public Service Commission took up the matter on appeal in Chitra's case.

While considering the scope of instructions to the candidates, in the light of the various judgments of the Honourable Supreme Court, as referred to above and Division Bench judgments cited supra, in that judgment, the Division Bench held in paragraph Nos.7 and 8 as follows: "7. There can be no controversy that the instructions to candidates and the brochure bind the candidates and the Service Commission, according to which, the candidates are bound to produce all the necessary documents/certificates along with the application.

In general, the application shall be rejected for non-production of such certificates/documents.

But, in our considered opinion, an exception can be carved out to the same.

At this juncture, it would be worthwhile to clarify that all certificates, which are required to be produced along with application, cannot be treated equally.

There are some certificates, like certificates relating to the basic qualification etc., which are essential, without which the applications cannot be entertained at all.

On the other hand, there are certain other certificates, like Community Certificate, certificates relating to special consideration, like sports certificate, NCC, NSS

Certificates, etc., which are not essential for entertaining the application of the candidates.

So, there can be no controversy that non-production of the former kind of certificates within the cut off date, shall be a ground to reject the application summarily, as mentioned in the instructions to the candidates and information brochure, because, they relate to the essential qualifications for making application.

To put it otherwise, unless the Service Commission is satisfied about the eligibility criteria based on the said certificates, it cannot entertain the applications, and therefore, the applications in such an event are to be necessarily rejected.

8.

Insofar as the later kind of certificates are concerned, for entertaining the application, these certificates, which relate only to special qualifications or consideration, are not that much material.

Even in the absence of these certificates, the applications are to be entertained and when the question of considering the special qualifications or status arises, it would be suffice, if the certificates are made available to the Commission.

For example, if a candidate claims that he/she is entitled for being considered under the quota reserved for Schedule Tribe Community and if the required Community Certificate is not produced, his/her application cannot be rejected, but instead he/she has to be treated under the open quota.

For any reason, if such a Community Certificate is produced before the date of finalization of the provisional selection list based on the cut off marks secured in the written examination, in our opinion, the same would be suffice.?

10. At last, the Division Bench held that production of certificate by the candidate belatedly, cannot be a ground to reject her candidature.

The Division Bench held that it would be suffice if the community certificate is produced before the provisional list of selected candidates is finalized.

11.Relying on these judgments, the learned counsel submitted that in the case on hand also, assuming that the community certificate had not been produced along with application, the production of the certificate, at the time of certificate verification would satisfy the legal requirements and therefore as held in Chitra's case, the petitioner should have been considered for selection under the category of Most Backward Community/Deserved Community Category (Women).Thus, according to the learned counsel, rejection of the candidature of the petitioner is illegal.

12.The learned counsel for the respondent would submit that non- production of the community certificate along with application is a serious violation of the instructions to the candidates and therefore, the candidature of the petitioner cannot be considered as against the Most Backward Category.

Hence, according to the respondent, the candidate was considered as against the general category and since she had not secured required marks, she was not selected.

In support of his contention, the learned counsel would rely on a Division Bench judgment in N.Bamila vs The Secretary, Tamil Nadu Public Service Commission in W.A.No.2265 of 2011, wherein, the Division Bench has taken the view that the non-production of the community certificate along with application would disentitle the candidate from claiming to be considered under the reserved category.

In paragraph No.17, the Division Bench has held as follows: 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.?

13.Placing heavy reliance on the said judgment, the learned counsel would submit that in the case on hand, since the petitioner had not produced community

certificate along with her application, she cannot be considered as against the quota reserved for Most Backward Community (Women).¹⁴ I have considered the above submissions.

Consistently, three Division Benches of this Court, as referred to above, have held the view that mere non-production of the community certificate along with application is immaterial and it would suffice, if the certificate is produced at least at the time of certificate verification.

In Chitra's case, this Court has distinguished the certificates relating to basic qualification etc., which are essential, without which the application cannot be entertained and the other certificates like community certificate, certificate relating to special consideration like NCC, NSS certificate etc., The Division Bench has held that non-production of the essential certificates relating to basic qualification is a matter of serious concern and in those cases, application itself should be rejected.

The Division Bench has further held that mere non-production of community certificate, which is not an essential certificate for entertaining the application cannot be a ground for rejecting the candidature of the candidate to make the claim under the said category.

Precisely, the same view has been expressed by the earlier Division Bench in Dr. Rajapandian's case wherein, the Division Bench has held that the right to selection is determined by the fact that the candidate belongs to that category and not by the certificate, which is only a piece of evidence.

¹⁵ These three Division Bench judgments were long prior to the judgment in E. Bameela's case, but unfortunately, none of the said Division Bench judgments were brought to the notice of the Division Bench, which decided the Bameela's case.

Further in Chitra's case, the Division Bench has simply followed the judgments of the Supreme Court in Charles K. Skaria and others Vs Dr. C. Mathew and others. (1980) (2) SCC 752 and Dolly Chanda vs Chairman, ((2005) 9 SCC 779,

wherein, similar view has been expressed.

But the Division Bench which decided the Bameela's case was not apprised of the above judgments of the Supreme Court and the earlier Division Bench judgments referred to above.

Therefore, in my considered opinion, since the Division Bench judgments [(i)Premanand Vs The State of Tamil Nadu (ii)Dr.A.Rajapandian Vs The State of Tamil Nadu and iii)The Secretary, Tamil Nadu Public Service Commission vs M.Chitra are in tune with the judgments of the Honourable Supreme Court, I hold that these three judgments have held the correct law and they have the force binding precedents.

I regret to state that the judgment in E.Bameela's case is rendered per incurium.

In such view of the matter, following the three Division Bench judgments, I have to necessarily hold that the non-production of the community certificate along with the application is immaterial.

Therefore, the petitioner is entitled to be considered as against the reserved vacancy for the Most Backward/Denotified Community Category (Women).¹⁶In the result, the writ petition is allowed.

The rejection of the petitioner by the Tamil Nadu Public Service Commission is set aside and the Tamil Nadu Public Service Commission is hereby directed to consider the claim of the petitioner for selection under the category of Most Backward /Denotified Community Category (Women) and if she is selected, then, forward her name to the appointing authority for issuance of appointment order.

Such exercise shall be completed by the Tamil Nadu Public Service Commission within a period of eight weeks from the date of receipt of a copy of this order.

Consequently, connected M.P.(md).Nos.1 & 2 of 2012 are closed.

No costs.

22.08.2014 vs Index :yes Internet:yes.

Note to the Registry: Issue copy on 04.09.2014 S.NAGAMUTHU, J.

vs To THE SECRETARY, TAMILNADU PUBLIC SERVICE COMMISSION
COMMERCIAL TAX ANNEXED BUILDING, NO.1 GREMS ROAD, CHENNAI ?.

06.

W.P.(md).NO.16299 of 2012 22.08.2014

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