

Case relating to non-enclosure of certificate:

Parties : Dr. S. Bhuvaneshwar Karthik & Another Versus The Tamil Nadu Public Service Commission rep. By its Member Secretary & Others

Court : High Court of Judicature at Madras

Case No : W.P.Nos.27108 & 27110 of 2008 and connected miscellaneous petitions

Judges: THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

Appearing Advocates : For the Petitioners: M.R. Sivakumar, A. Immanuel, Advocates. For the Respondents: Ms. C.N.G. Ezhilarasi, Advocate.

Date of Judgment : 14-11-2008

Head Note :-

Constitution Of India - Article 226 - the petitioner has completed his B.D.S. Degree Course in the second respondent University having passed all examinations on 3.4.2008 including internship examinations and the petitioner made repeated attempts to obtain Provisional Certificate, however, the second respondent University has chosen to issue the Provisional Certificate on 26.8.2008, after a legal notice was issued on behalf of the petitioner to the second respondent University. In the meantime, based on the notification issued by the Tamil Nadu Public Service Commission dated 8.7.2008, the petitioner applied for the post of Assistant Surgeon (Dental) on 26.7.2008 which was well within the last date for making application, viz., 27.8.2008. The application of the petitioner came to be rejected by the Tamil Nadu Public Service Commission by the impugned order dated 4.11.2008 on the ground that the petitioner has not registered his name with the Tamil Nadu Dental Council on the date of notification as prescribed in Para-6(B)(ii) of the Commission's notification - The petitioners are not entitled to the relief as claimed in the writ petitions and the impugned orders do not warrant any interference.

Comparative Citation:
2009 (1) MLJ 483

Judgment :-

(Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus as stated therein.)

Common Order:

In W.P.No.27108 of 2008, the petitioner has completed his B.D.S. Degree Course in the second respondent University having passed all examinations on 3.4.2008 including internship examinations and the petitioner made repeated attempts to obtain Provisional Certificate, however, the second respondent University has chosen to issue the Provisional Certificate on 26.8.2008, after a legal notice was issued on behalf of the petitioner to the second respondent University. In the meantime, based on the notification issued by the Tamil Nadu Public Service Commission dated 8.7.2008, the petitioner applied for the post of Assistant Surgeon (Dental) on 26.7.2008 which was well within the last date for making application, viz., 27.8.2008. The application of the petitioner came to be rejected by the Tamil Nadu Public Service Commission by the impugned order dated 4.11.2008 on the ground that the petitioner has not registered his name with the Tamil Nadu Dental Council on the date of notification as prescribed in Para-6(B)(ii) of the Commission's notification dated 8.7.2008.

2. In W.P.No.27110 of 2008, the petitioner completed her Bachelor Degree in Dental Surgery

Course on 8.4.2008 and registered her name with the Tamil Nadu Dental Council on 5.8.2008. Based on the notification issued by the Tamil Nadu Public Service Commission, the petitioner applied for the post of Assistant Surgeon (Dental) on 25.8.2008. Her application was rejected by the Tamil Nadu Public Service Commission on 4.11.2008 on the same ground that the application is against the conditions prescribed in Para 6(B)(ii) of the Commission's Notification dated 8.7.2008.

3. Learned counsel for the petitioners in these petitions have submitted that the rejection of the petitioners was not due to any mistake committed by the petitioners, especially when the petitioner in W.P.No.27108 of 2008 completed his degree in April, 2008, however, it was the second respondent University which had taken four months time to issue Provisional Certificate and immediately after the same was issued in August, 2008, the petitioner forwarded the said Provisional Certificate to the Tamil Nadu Dental Council and got his name registered on 26.8.2008. Therefore, according to the learned counsel for the petitioner in W.P.No.27108 of 2008, it is by the conduct of the University in delaying the issue of Provisional Certificate, the registration certificate was obtained by the petitioner only after the application for the post of Assistant Surgeon (Dental) was made, but before the same was processed by the Tamil Nadu Public Service Commission and therefore, no prejudice would be caused to anyone.

4. According to the learned counsel, in W.P.No.27110 of 2008, the petitioner in fact registered herself with the Tamil Nadu Dental Council on 5.8.2008 and enclosed the said certificate along with the application and therefore, she has complied with the requirements in Para 6(B)(ii) of the Notification dated 8.7.2008. She has also filled up in the check-list provided in Column-25 of the application form denoting that she is enclosing the Dental Council registration certificate. According to the learned counsel, even though the registration with the Dental Council was made on 5.8.2008 and not on 8.7.2008, inasmuch as the application had been sent along with the required certificate her case should be considered separately, since there is no prejudice caused to anyone.

5. On the other hand, the learned counsel appearing for the Tamil Nadu Public Service Commission has produced the original application of the petitioner in W.P.No.27110 of 2008. It is true that the petitioner in the said writ petition has enclosed the registration certificate dated 5.8.2008 issued by the Tamil Nadu Dental Council in her favour. It is also true that in the application, especially relating to column No.25 in para-15, she has stated that she is enclosing the registration certificate also. The contention of the learned counsel appearing for the Tamil Nadu Public Service Commission is that though it is true that the application has been in fact enclosed with the registration certificate, still the petitioner should be deemed to be unqualified by applying para 6(B) of the notification. As far as other writ petition (W.P.No.27108 of 2008) is concerned, her contention is that the Tamil Nadu Service Commission is the authority to verify the certificates produced by the candidates' and it is for the Government to make appointments and the Commission is not concerned about any delay by the University in issuing the basic degree to the petitioner to apply for the post and the delay caused due to the conduct of third party cannot be a concern for the Tamil Nadu Public Service Commission while performing its constitutional functions. Therefore, according to her, the writ petitions are liable to be dismissed, following the judgment of Division Bench of this Court in a batch of writ petitions in W.P.No.32383 of 2005, etc. (Dr. M. Vennila and others vs. Tamil Nadu Public Service Commission, Govt.Estate, Anna Salai, Chennai-2 and others [2006 (3) CTC 449]).

6. The notification issued by the Tamil Nadu Public Service Commission calling for application for appointment to the post of Assistant Surgeon (Dental) stipulates the following qualifications in para-6:

"6. Qualifications:

(A) AGE: (as on 01.07.2008): Below 30 years. No maximum age limit for SCs., STs.,MBCs./DCs., BCs. (other than BCCs and BCMs.) BCCs., BCMs. and Destitute Widows of all castes.

(B) EDUCATIONAL QUALIFICATIONS:

Candidates should possess the following or its equivalent qualification on the date of this Notification, viz., 08.07.2008:

(i) A Degree in Dental Surgery of any University or Institution recognized by the University Grants Commission for the purpose of its Grant.

AND

(ii) Must be a Registered Medical Practitioner within the meaning of Clause (f) of Section 2 of the Dentist Act, 1948 (Central Act 16 of 1948). Details regarding equivalence of qualification are given in paragraph 9 of the Commission's Instructions, etc. to candidates)."

7. A reading of the said qualifications especially relating to educational qualifications makes it clear that not only a degree in Dental Surgery, but also registration as Medical Practitioner with the Dental Council must be possessed on the date of notification viz., 8.7.2008. In W.P.No.27108 of 2008, it is seen that even though the petitioner completed the B.D.S. course on 3.4.2008 before the date of notification, viz., 8.7.2008, he was not possessing the degree in dental surgery on the date of notification since admittedly the Provisional Certificate came to be issued by the University only on 19.8.2008 which is much after the date prescribed in the notification. In the other W.P.No.27110 of 2008, the petitioner obtained the degree certificate well before the date of notification, but her registration with the Dental Council was made on 5.8.2008 and therefore, she was not a registered Medical Practitioner as on the date of notification, viz., 8.7.2008 and she lacks qualification for the purpose of consideration of her application for the post of Assistant Surgeon (Dental).

8. In fact, clause 11 of the Notification which speaks about the enclosures to be sent along with application, viz.,

"11. Enclosures to be sent along with application:

Candidates should enclose copies of all certificates (including evidence for Educational Qualification (i.e.) B.D.S. Degree/Provisional Certificate and Medical Registration Certificate in the State of Tamil Nadu) as mentioned in para-15 of the Commission's

'Instructions, etc. to candidates' and item 25 under part-II of information Brochure along with a Postal Receipt to the value of Rs.125/- (Rupees One hundred and twenty five only)pasted in the column provided in the application, unless exemption of fee is claimed. Original Certificates should not be sent. Those applying online, please refer point D of para 13 of this Notification/Advertisement." makes it clear that B.D.S. Degree certificate as also Medical Registration Certificate have to be enclosed along with the application and therefore, when there is a specific requirement, in the absence of production of such documents, there is no difficulty for coming to the conclusion that the petitioners cannot certainly be eligible to be considered as per the notification.

9. In similar circumstances, as submitted by the learned counsel for the respondents, in 2006 (3) CTC 449 [Dr. M. Vennila and others vs. Tamil Nadu Public Service Commission, Govt.Estate, Anna Salai, Chennai-2 and others], the Division Bench of this Court consisting P. Sathasivam, J. (as he then was) and J.A.K. Sampathkumar, J. held that the terms and conditions of Instructions, etc. to candidates and information brochure have to be strictly complied with. The Division Bench

has further held that the High Court while exercising its powers under Article 226 of the Constitution of India cannot make any modification or relaxation of such conditions stipulated. It was held that when the conditions are not strictly followed, the applications are liable to be rejected. The said decision was based on a Full Bench judgment of Punjab and Haryana High Court rendered in *Rahul Prabhakar v. Punjab Technical University, Jalandhar* (AIR 1998 P & H 18). The Division Bench has referred to the portion of the said judgment, which is as follows:

"A Full Bench of this Court in *Amardeep Singh Sahota vs. State of Punjab* (1993 (4) Serv LR 673) had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In *Raj Singh vs. Maharshi Dayanand University* (1994 (4) R.S.J. 289) another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in *Sachin Gaur vs. Punjab University* (1996 (1) RSJ 1: AIR 1996 Punj & Har 109) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP.No.6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the co-ordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected."

10. The Division Bench has also relied upon the judgment of the Supreme Court in *Punjab Engineering College, Chandigarh v. Sanjay Gulati* (AIR 1983 SC 580) wherein the Supreme Court has enunciated the principle that the contents of the prospectus are binding on all persons concerned. That judgment was subsequently followed by a Division Bench of this Court in *Rathnaswamy, Dr. A. v. Director of Medical Education* (1986 WLR 207) holding that the rules and norms of the prospectus are to be strictly and solemnly adhered to and that was also the view taken by another Division Bench of this Court in *Dr. M. Ashiq Nihmathullah v. The Government of Tamil Nadu and others* (2005 WLR 697). Ultimately, the Division Bench in 2006(3) CTC 449 has held as follows:

"25. In the earlier part of our order, we have extracted relevant provision, viz., Instructions, etc. to Candidates as well as the Information Brochure of the Tamil Nadu Public Service Commission, we hold that the terms and conditions of Instructions, etc. to Candidates and Information Brochure have the force of law and have to be strictly complied with. We are also of the view that no modification / relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India and application filed in violation of the Instructions, etc. to Candidates and the terms of the Information Brochure is liable to be rejected. We are also of the view that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language. As said at the beginning of our order, since similar violations are happening in the cases relating to admission of students to various courses, we have dealt with the issue exhaustively. We make it clear that the above principles are applicable not only to applications calling for employment, but also to the cases relating to the admission of students to various courses. We are constrained to make this observation to prevent avoidable prejudice to other applicants at large."

11. In W.P.No.18579 of 2008, by judgment dated 1.8.2008, the Division Bench presided over by S.J. Mukhopadhaya, J., while dealing with a similar situation regarding the conduct of examinations by the Tamil Nadu Public Service Commission in the matter of Civil Judges (Junior Division), has held that when the notification of the Tamil Nadu Public Service Commission specifically states that a person who seeks reservation on the basis of community status should produce community certificate issued by the competent authority, in the absence of such certificate, the rejection of application by the Commission is justified. The Division Bench on the analysis of the similar notification has held as follows:

"5. From the notification/advertisement, as quoted above, it would be evident that it was mandatory on the part of the applicant(s) to file certain documents claiming one or other benefit and in the absence of such documents, the application could not have been entertained by the respondent/TNPSC. The petitioner has failed to enclose the relevant document, namely, the Community Certificate, in support of his claim".

12. In fact, in similar writ petitions filed against Tamil Nadu Public Service Commission regarding appointment of Dental Surgeons, in W.P.Nos.26746 and 27005 of 2008, this Court by judgment dated 14.11.2008, after following the above said judgments, has rejected the similar case of the petitioners.

13. In view of the legal position especially when the Division Bench of this Court has taken a definite stand that contents of the notification are to be strictly adhered to, it is not possible for this Court to accept the case of the writ petitioners. The petitioners are not entitled to the relief as claimed in the writ petitions and the impugned orders do not warrant any interference. The writ petitions fail and the same are dismissed. No costs. Connected miscellaneous petitions are closed.