
(2012) 06 MAD CK 0220

In the Madras High Court

Case No : Writ Petition No. 14054 of 2012 and M.P. No. 1 of 2012

D. Thriveni-Register No. 17826

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 06-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 3 CTC 796

Hon'ble Judges : M.M. Sundresh, J;K. Suguna, J

Bench : Division Bench

Advocate : Yashod Vardhan, for K. Moorthy, for the Appellant; R. Vijayakumar, Additional Government Pleader for Respondent No. 1; A.L. Somayaji, for R. Tholkappian, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—The Petitioner is one of the candidates who has attended the examination in pursuance of the Notification issued by the First Respondent on 21.1.2012, calling for Applications for 185 posts of Civil Judge in the Tamil Nadu State Judicial Service. Clause 11(A)(iv) of the Notification would state that a candidate will have to enclose the Community Certificate (in case of Reserved Categories) issued by the Competent Authority. Clause 15 of the Notification stipulates that incomplete Applications would be summarily rejected and no communication will be issued.

2. However, the Second Respondent has issued communication to all those candidates who have not enclosed the Community Certificate. This action has been taken in order to give an opportunity to the candidates to produce the Community Certificates to which they belong.

3. It is not in dispute that the Petitioner who hails from the Union Territory of Puducherry, was not given any such communication and her name was not found in the list of candidates who had been informed to produce the Community

Certificates. Accordingly, she was treated as an open category candidate. She wrote the examination and obtained the following marks:

(i) Translation Paper - 45 marks

(ii) Law Paper -I - 46 marks

(iii) Law Paper - II - 35 marks

(iv) Law Paper - III - 59 marks

Total -185 marks

4. Since the Petitioner has not been issued with a letter for appearing for interview, she made a representation on 7.5.2012. The said representation was followed by another representation on 9.5.2012. A reply was given by the Second Respondent on 11.5.2012 stating that she has failed to enclose the Community Certificate in her Application and the Community Certificate produced by her subsequently from the Deputy Tahsildar, Thirunallar, Government of Puducherry, cannot be accepted for the purpose of treating her as one belonging to the Backward Class in the State of Tamil Nadu. By the said reply, she has been further informed that for considering her as a Backward Class candidate, she must have the Community Certificate issued by the Competent Authorities within the State of Tamil Nadu.

5. Thereafter, the Petitioner made another representation on 15.5.2012, enclosing a copy of the Community Certificate issued by the Competent Authority, viz., the Deputy Tahsildar, Kalkulam Taluk, Kanyakumari District, to the effect that she belongs to Backward Class community. Since, even thereafter, she has not been called for inter view, the present Writ Petition has been filed.

6. The learned Senior Counsel appearing for the Petitioner would submit that when an opportunity was given to the similarly placed candidates, the same was denied to the Petitioner; the word "Competent Authority" has not been defined denoting the same to an authority in the State of Tamil Nadu; it is not in dispute that the Petitioner has obtained certificate from the Competent Authority from the Government of Puducherry; it is also not in dispute that as per the policy of the Government of Tamil Nadu, the said community is also a Backward Community in the State of Tamil Nadu; a number of candidates who secured lesser marks than the Petitioner were called for interview; unfortunately, the Petitioner has been wrongly treated as an open category candidate in spite of the fact that she belongs to Backward Class community; it is not as if the community to which she belongs, is in dispute; the Petitioner has made, an averment in the Affidavit stating that she has enclosed the Community Certificate on the footing that no communication was sent to her earlier stating that she has not enclosed such a certificate of her community; therefore, the said averment made by her, cannot be the sole basis to non-suit her for the consideration of her case to the post of Civil Judge, by giving an opportunity to attend the interview; when the Petitioner has written the examination and secured higher marks than the other

Backward Class community candidates, she cannot be denied of an opportunity to participate in the interview process.

7. The learned Senior Counsel appearing for the Petitioner has also placed reliance upon a judgment of the Hon'ble First Bench of this Court in *The Secretary, Tamil Nadu Public Service Commission and others v. J. Thamizhisai and others*, CDJ 2011 MHC 568, and submitted that Community Certificate can also be produced at the relevant point of time.

8. Per contra, the learned Senior Counsel appearing for the Second Respondent would submit that even though the Petitioner has not been informed, as done to the other candidates, to produce Community Certificate, she has failed to produce the same even on 7.5.2012; actually, the Petitioner has not produced her Community Certificate along with the Application; the averment made by the Petitioner in the Affidavit filed in support of the Writ Petition is not true; even though the word "Competent Authority" has not been defined, the same would necessarily mean an authority situated in the State of Tamil Nadu alone; the Petitioner has come to this Court at the last stage; therefore, this Writ Petition will have to be dismissed on the ground of delay, laches and acquiescence. Hence, the learned Senior Counsel appearing for the Second Respondent prayed that the Writ Petition will have to be dismissed.

9. The facts narrated above would reveal that, admittedly, the Petitioner was not sent any communication requiring her to produce the Community Certificate. It is also not in dispute that all the other similarly placed candidates had been given an opportunity to produce Community Certificate. Therefore, for the omission caused at the instance of the Second Respondent, the Petitioner cannot be found fault with by taking umbrage of her subsequent conduct. There is every possibility that the Petitioner would have produced the Community Certificate, had the communication been sent to her at the appropriate time.

10. The Petitioner has written the examination and she has secured sufficient marks, eligible to be called for interview in the category of Backward Class Community. It is also not in dispute that in the said category, candidates who have secured lesser marks than the Petitioner have been called for interview. The Notification does not clearly stipulate that the Petitioner will have to get the Community Certificate only from an authority from the State of Tamil Nadu. It is also not in dispute that the community of the Petitioner is also considered to be a Backward Community in the State of Tamil Nadu as well. Further, this fact is also amply proved by the certificate issued by the Competent Authority in the State of Tamil Nadu. Therefore, we are of the view that there is no difference in the Petitioner producing the Community Certificate on 7.5.2012 and subsequently on 15.5.2012.

11. Even otherwise, as discussed above, had the Petitioner been given an opportunity, she would have produced her Community Certificate from the authorities of the State of Tamil Nadu, at the appropriate time. Even assuming

for the sake of arguments that the Petitioner would have produced a Community Certificate from the Government of Puducherry, there is every reason to believe that she would have produced such a certificate from the Competent Authorities from the State of Tamil Nadu as well.

12. This matter can be seen from yet another angle as well. The Petitioner has secured sufficient marks. The candidates who have secured lesser marks than the Petitioner have been called for interview. She has not been called for interview on the only ground that she has not produced the Community Certificate. The facts narrated above, would show that the Petitioner is not wholly at fault for the non-production of Community Certificate. The submission of the learned Senior Counsel appearing for the Second Respondent that the Petitioner has approached this Court belatedly and therefore, she is not entitled for the discretionary and extraordinary relief under Article 226 of the Constitution of India, in our considered view, cannot be countenanced. Delay, laches and acquiescence are to be seen on the facts and circumstances of each case and there is no law which mandates that a relief can be denied merely on the ground of delay. The position of law has been rather well settled by the Hon'ble Apex Court in various pronouncements, including the recent one in Royal Orchid Hotels Limited and Another Vs. G. Jayarama Reddy and Others, , wherein it has been held that rule against laches is one of practice and not law.

13. Therefore, taking the above said facts into consideration, we are of the view that the Petitioner will have to be given an opportunity to participate in the interview. The learned Senior Counsel appearing for the Second Respondent would submit that the interview would go on till 8.6.2012. We believe that there is still time for the Petitioner to be called for the interview. Accordingly, considering the facts and circumstances of the case, we direct the Respondents to permit the Petitioner to attend the interview before the completion of viva voce.

14. The learned Senior Counsel appearing for the Second Respondent has submitted that, in view of this order, the Petitioner would be permitted to attend the interview scheduled on 8.6.2012. In view of the above submission made by the learned Senior Counsel appearing for the Second Respondent, the Petitioner is directed to be present at the Judicial Academy, Chennai 600 028, from 9.00 a.m. on 8.6.2012.

The Writ Petition is ordered accordingly. No costs. Connected Miscellaneous Petition is closed.