
(2013) 04 MAD CK 0211
In the Madras High Court
Case No : W.A. No. 259 of 2013

G. Udhayan

APPELLANT

Vs

The Member Secretary

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Citation : (2013) 4 MLJ 385 : (2013) WritLR 570

Hon'ble Judges : R.K. Agrawal, Acting C.J.; N. Paul Vasanthkumar, J

Bench : Division Bench

Advocate : Sudha Ravi for Mr. Ravi Shanmugam, for the Appellant; T.N. Rajagopalan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is filed against the order of the learned single Judge made in W.P. No. 30952 of 2012 dated 7.1.2013, dismissing the writ petition filed by the appellant herein, praying for a direction to provisionally select him for the post of Grade-II Police Constable for the year 2012, subject to police verification and medical examination. The case of the appellant herein before the learned single Judge was that he applied for the post of Grade-II Police Constable in the Armed Reserve pursuant to the applications invited for selection in the year 2012. According to the appellant, he was not selected in spite of he securing necessary marks for selection under the 10% quota reserved for Wards Category. He also claimed selection under sports category.

2. The learned single Judge dismissed the writ petition on the ground that the appellant had not enclosed necessary certificates to prove that he is the son of a Police Personnel. Insofar as consideration under sports category is concerned, the appellant had given up his right.

3. It is the contention of the appellant that if he is considered under the wards category, he will be coming within the cut-off mark for selection and non-

consideration of the appellant under the wards category due to the fault of the department in not issuing ward-cum-dependant certificate cannot be put against the appellant.

4. In the counter affidavit filed in the writ appeal it is stated that the appellant was not considered under the wards category as he has not enclosed the ward-cum-dependant certificate, for which 10% seats are reserved, though the appellant claimed in Column No. 16 of the application that he is claiming seat under the wards category. The appellant secured 45 marks in written test and 9 marks in the physical verification test and totally he secured 54 marks. Therefore, the appellant was treated as MBC (General) candidate as he was ranked at 67 under MBC (General) list.

5. The learned counsel appearing for the appellant relied on the application wherein he has claimed himself as son of a police personal viz., N. Ganesan, Constable No. 3032, presently attached with Kavarapettai Police Station and persons secured upto 46.61 marks under wards category were selected and as such, appellant, who secured 54 marks is bound to be selected under Wards category. The learned counsel further argued that the appellant having enclosed police identity card issued to his father and the said identity having not been disputed, he is bound to be considered under the wards category. The learned counsel also relied on the counter affidavit filed before the single Judge, wherein it is stated that the respondent admitted that he was initially considered under ward-cum-dependants quota, however he was treated as open quota candidate in MBC category. Learned counsel further submitted that similar case was allowed by this Court in W.P. No. 1166 of 2010 Judgment dated 19.2.2010 and also relied on certain decisions of the Supreme Court and of this Court in support of her contentions.

6. The learned Additional Government Pleader on the other hand argued that the appellant having not enclosed ward-cum-dependant certificate, he is not entitled to be considered under the reserved category.

7. We have considered the rival submissions of learned counsel appearing for the appellant as well as learned Additional Government Pleader appearing for the respondent.

8. It is not in dispute that the appellant is the son of N. Ganesan, who is serving as Police Constable with PC No. 3032, attached to Kavarapettai Police Station, Tiruvallur District. The appellant also claimed selection under the Wards category. In column No. 22 of the application form requiring to state whether the candidate is applying under Wards-cum-Dependant Category, the appellant shaded as "Yes". Appellant's name was also considered under the said category as per the counter affidavit filed before the learned single Judge. Enclosure of copy of identity card issued to the appellant's father along with application form is also not disputed. Thus, it is evident that the appellant is the son of the said N. Ganesan, a serving Police Constable.

9. The contention of the appellant is that petitioner's father was not in station while he applied for the post and therefore he could not get the Wards-cum-Dependant Certificate, however the identity card issued by the Superintendent of Police to the petitioner's father was enclosed, which is a clear proof of appellant's claim under wards category. Thus, it is beyond doubt that the appellant is coming within the Wards-cum-Dependant category for selection as Police Constable Grade-II, for whom 10% posts are reserved.

10. The issue as to enclosing the certificate for selection in a particular category is directory or mandatory, came up before this Court in the decision reported in Dr. A. Rajapandian Vs. State of Tamil Nadu and The Deputy Secretary, Tamilnadu Public Service Commission, . In the said decision the registration certificate of Veterinary Assistant Surgeons was not enclosed by some candidates, who applied for selection to the post of Veterinary Assistant Surgeons. The Division Bench allowed batch of cases, relying on the earlier Division Bench order reported in V. Premanand Vs. The State of Tamil Nadu and others, wherein it was held that "as long as it is not in dispute that the petitioner belongs to the category of "children born of inter-caste marriage between SC/ST and forward community", and he was able to produce the certificate before the application was scrutinised for admission, the rejection on the ground that certificate was not enclosed is only a procedural lapse and production of certificate is only a piece of evidence". Same is the view taken by another Division Bench of this Court in the decision reported in (2010) 2 MLJ 146 (Secretary, TNPSC v. M. Chitra) regarding non-production of community certificate.

11. The Supreme Court in the decision reported in Dolly Chhanda Vs. Chairman, JEE and Others, considered similar issue and in paragraph 7 held thus,

7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e., in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc., necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

The said decision was rendered by following an earlier decision reported in Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, . Similar contention raised in the said decision by the unsuccessful candidates seeking to quash the

selection of candidates, who have not enclosed the certificates for the award of extra mark was considered in paragraphs 20 and 24, which read thus,

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. 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 not man for law. Much of hardship and harassment in administration flows from overemphasis 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.

12. Applying the said judgments to the facts of this case and having regard to the fact that the appellant claimed post under reserved category of Wards and Dependents category in his application form, which is admitted by the respondent in the counter affidavit, we hold that the appellant herein is entitled

to be considered for provisional selection to the post of Grade-II Police Constable under wards category, based on his marks secured by him, viz., 54 marks. Appellant may be given liberty to produce the Ward-cum-Dependant certificate, if not produced already. On production of such certificate, the appellant petitioner is entitled to get appointment as Police Constable Grade-II, subject to police verification and medical examination. In the light of the above findings, we set aside the order of the learned single Judge dated 7.1.2013 and allow this writ appeal. The respondent is directed to issue provisional selection order to the appellant on his production of Ward-cum-Dependant certificate from the competent authority, within four weeks from the date of receipt of copy of this order, and subject to police verification and medical examination of appellant, further course of action is directed to be taken by the authorities of the Police Department. No costs.