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**(2008) 12 MAD CK 0289**

**In the Madras High Court**

**Case No :** Writ Petition (MD) No's. 8722, 9140, 9141, 8989, 9041 of 2007 and M.P. (MD) No's. 1 of 2007 in respective W.P. No's. 8722, 9140, 9141, 8988, 8989, 9041, 9042 of 2007 and M.P. (MD) No. 1 of 2008 in Writ Petition No. 588 of 2008

P. Gnanasekaran

APPELLANT

Vs

The Chairman, Tamil Nadu Public Service Commission, The Controller of Examination, Tamil Nadu Public Service Commission, The Head Post Master and The Superintendent, Railway Mail Service <BR>A. Subbaiah Vs The Secretary, Tamil Nadu Public Service Commission <BR>S. Suresh Vs The Chairman, Tamil Nadu Public Service Commission and Others <BR>Krishnakumar Vs The Chairman, Tamil Nadu Public Service Commission, The Controller of Examination, Tamil Nadu Public Service Commission, The Head Post Master and The Senior Superintendent of Post

RESPONDENT

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**Date of Decision :** 18-12-2008

**Acts Referred:**

**Citation :** (2008) 12 MAD CK 0289

**Hon'ble Judges :** S. Nagamuthu, J

**Bench :** Single Bench

**Advocate :** K. Srinivasan, in W.P. MD Nos. 8722, 9140 and 9141/2007, V. Kathirvelu, in W.P. MD Nos. 8988 and 8989/2007, M. Michael Bharathi, in W.P. MD Nos. 9041 and 9042/2007 and K. Srinivasan, in W.P. MD No. 588/2008, for the Appellant; K. Srinivasan, R. Anitha, Additional Government Pleader for RR-1 and 2 and M.D. Poorna Chari, for RR-3 and 4 in W.P. (MD) Nos. 8722, 9140 and 9141/2007, R. Anitha, Additional Government Pleader in W.P. (MD) Nos. 8988 and 8989/2007, R. Anitha, Additional Government Pleader for RR-1 to 4 and D. Sivaraman, for 5th Respondent in W.P. (MD) Nos. 9041 and 9042/2007, R. Anitha, Additional Government Pleader for RR-1 and 2 and K. Anandakumar, for RR-3 and 4 in W.P. (MD) No. 588/2008, for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Nagamuthu, J.

W.P. (MD) Nos. 8722, 9140, 9141, 8988, 8989, 9041 and 9042 of 2007:

1. Since a common issue is involved in these Writ Petitions, all were heard together and they are disposed of by means of this common order.

2. The Tamil Nadu Public Service Commission issued an advertisement calling for applications from eligible persons for Combined Subordinate Services Examinations-I-2007. The last date for receipt of the applications by the Tamil Nadu Public Service Commission was 31.07.2007 and the time was 05.45 p.m. Admittedly, in all these cases, the petitioners sent their applications well in advance either by registered post or by speed post. But, the applications were received by the Tamil Nadu Public Service Commission beyond 31.07.2007 due to postal delay. So, the Tamil Nadu Public Service Commission did not consider their applications. At that juncture, all of them have rushed to this Court with these Writ Petitions.

3. This Court, by interim orders, has directed the Tamil Nadu Public Service Commission to permit the petitioners to participate in the examinations. Accordingly, they have already written their examinations. But, the results have been withheld, as per the directions of this Court.

4. The contention of the petitioners is that according to the advertisement, the applications can be sent either through registered post or through speed post and not by means of any other mode and thus, the postal department has acted as agent of the Tamil Nadu Public Service Commission and, therefore, it should be construed that the applications were submitted in time. The learned Counsel appearing for the petitioners would rely on a Full Bench judgment of this Court in R. Vinothkumar Vs. The Secretary, Selection Committee and Others, .

5. Per contra, the counsel appearing for the respondents would submit that the Tamil Nadu Public Service Commission cannot be held responsible for the delayed receipt of the applications and if at all there is one to be blamed, it is only the Postal authorities and so, the petitioners can very well work out their remedies against the postal authorities for any relief, like damages. The learned Counsel would further submit that since the applications were not received in time, their applications were not considered rightly and, therefore, all the petitions are liable to be dismissed, it is contended.

6. I have considered the rival submissions.

7. In R. Vinothkumar's case cited supra, the Full Bench of this Court, after referring to various judgments of the Hon'ble Supreme Court as well as this Court and various other High Courts, has held that if there is an option for an applicant either to submit the application through registered post or in person, for any reason, if the applicant has exercised his option to send the application through post, then he has to blame himself for having not chosen to submit the application in person. The Full Bench has further proceeded to say that it is only in a case, where there is no other option given to a person to send the

application except by registered post or speed post, then a relationship of agency is created between the addressee and the postal department and in those circumstances, delivery of the application to the postal authority, namely, agent would tantamount to the delivery of the application to the addressee in time. To put it precisely, the date of delivery of the application to the postal department shall be construed to be the date of submission of the application to the addressee.

8. In the case on hand, a perusal of the notification issued by the Tamil Nadu Public Service Commission would disclose that no other option has been given to the applicants, except sending their applications either by registered post or by speed post. Had it been the case that there was yet another option of submitting the application in person to the Tamil Nadu Public Service Commission, then there can be some force in the argument of the learned Additional Government Pleader that the submission of an application to the postal authorities would not amount to submission of application to the Tamil Nadu Public Service Commission. Before elaborating more on this, it is appropriate to refer to the majority view of the Full Bench in paragraphs-20 to 22 of the judgment, which read as follows:

20. ...

For the sake of emphasis to drive home the point, the principle as evolved in those decisions, may be reiterated here: The principle is, where delivery can be made in a mode at the option of the sender, the agency through which delivery is made, acts as the agent of the sender; whereas, if delivery is made by way of despatch in the only mode stipulated or prescribed by the addressee, the agency, through which the article is despatched, acts as the agent of the addressee.

21. The principle, as understood by the latter Division Bench, is getting reflected by what is penned down in paragraph 11 of its order dated 29.11.1994, which is couched in the following terms:

11. We are bound to follow the principle laid down by the Supreme Court in such clear terms. It is, therefore, obvious that the Post Office acted as the agent of respondents 1 to 3 when it received the application sent by the petitioner by registered post on 22.6.1994. When the second respondent had included Clause 7 in the prospectus, that by itself would amount to a nomination by the second respondent of the Post Office as its agent. Consequently, the receipt of the application by the agent would amount to the receipt of the application by the Principal. In fact in Clause 7 of the prospectus, an option is given to the candidate to deliver the application either to the agent or to the principal. In this case, the petitioner being the candidate, having chosen to deliver the application to the agent as mentioned in Clause 7 of the prospectus cannot be deprived of her right to be considered for selection, just because the agent of the second respondent chose to pass it on to the principal only on 29.6.1994 which was after the prescribed date. When the agent received the application on 22.6.1994, it

was very much within the time prescribed by the prospectus and the principal viz., the second respondent is bound to consider that application.

22. In the case, which fell for consideration before the latter Division Bench, clauses 7 and 8 in the prospectus, as already indicated, gave an option to the applicant either to send the application in person or despatch the same with all enclosures by registered post, besides stipulating that the application sent by either of the modes should reach the addressee on or before the stipulated date and time or otherwise, the same would summarily be rejected. It is thus clear that if conditions or stipulations are contained in the prospectus with an option being given to applicants to send the applications either in person or by registered post and if an applicant prefers to send the application by registered post, by handing over the same at a post office some days earlier to the last date of receipt of applications and once such an option is exercised, it goes without saying that as per the principle evolved in the Common Denominator decisions of the Apex Court of this country, as reflected in the decision of the Division Bench of Orissa High Court, such post office must have to be construed to have been constituted as the agent of the sender/applicant and not the agent of the addressee/Directorate. Only if the post office is being constituted as the agent of the addressee, the receipt of application by such agent, long prior to the last date of receipt of application by the Principal/addressee/Directorate. In such a situation, the decision arrived at by the latter Division Bench of this Court cannot at all be stated to be in tune with the principle, as evolved by the Supreme Court, as indicated earlier.

9. A cursory glance through the above judgment of the Full Bench, as extracted above, would keep things beyond any pale of doubt that in cases, where except the option of sending the applications either through registered post or through speed post, if no other option has been given to submit the application in any other mode, like submitting the application in person, it has to be necessarily held that the postal department acts as agent of the addressee. If this principle is applied to the facts of the present case, I am sure that the date of delivery of the applications to the postal authorities shall be the crucial date, which admittedly is much before the cut off date prescribed by the Tamil Nadu Public Service Commission. Therefore, the Tamil Nadu Public Service Commission is bound to accept the applications of the petitioners and to proceed further.

10. W.P. (MD) No. 588 of 2008:

In this case, the application was made pursuant to the advertisement made by the Tamil Nadu Public Service Commission for Group-IV Service during the year 2006-2007. The cut off date was 14.12.2007 and the time was 05.45 p.m. The petitioner sent his application by speed post on 06.12.2007. But, the same was not received by the Tamil Nadu Public Service Commission. Since the petitioner did not receive hall ticket in time, he has rushed to this Court with this Writ Petition for appropriate relief.

11. This Court granted an interim order directing the Tamil Nadu Public Service Commission to allow the petitioner to participate in the examinations. Accordingly, he has written the examinations. But, the results have not been published, waiting for further direction from this Court.

12. As held earlier, while dealing with the other Writ Petitions, in the present case also, the only mode of submitting the application to the Tamil Nadu Public Service Commission was either by registered post or by speed post. No other option, like handing over the application in person has been provided for. Thus, the postal authorities have acted as agents of the Tamil Nadu Public Service Commission. In this case, it has been admitted in the counter of the respondents 3 and 4 that the petitioner's application was submitted on 06.12.2007, but, somewhere the same has been misplaced and so, the same was not delivered. But that would not improve the case of the Tamil Nadu Public Service Commission. Here, as I have already stated, delivery of the application to the postal authority would amount to delivery of the application to the Tamil Nadu Public Service Commission and so, the Tamil Nadu Public Service Commission is bound to receive a copy of the application of the petitioner, treat the same as though it is the original, publish the result of the petitioner and then to proceed further.

13. In the result,

(i) W.P. (MD) Nos. 8722, 9140, 9141, 8988, 8989, 9041 and 9042 of 2007 are allowed with a direction to the Tamil Nadu Public Service Commission to accept all the applications of the petitioners holding that they were made in time, publish the results of the examinations written by the petitioners and then to proceed further with the process of selection in accordance with law.

(ii) Writ Petition No. 588 of 2008 is allowed, in the following terms:

The Tamil Nadu Public Service Commission is directed to supply a form of application and on receiving the same, the petitioner is directed to fill up the same properly and submit the same to the Tamil Nadu Public Service Commission within a period of 15 days from the date of receipt of a copy of this order and on receipt of the said application, the Tamil Nadu Public Service Commission is directed to treat the same as the one submitted in time, publish the result of the petitioner, and then to proceed further in accordance with law.

14. Before parting with the case, I deem it appropriate to record the appreciation of this Court for the wonderful help rendered by the learned Counsel Mr. R.S. Ramanathan, who was appointed as Amicus Curiae in this case to assist the Court to resolve the legal issue involved in this case.

No costs. Consequently, the connected miscellaneous petitions are closed.