

(2013) 09 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 24618 of 2013 and M.P. No. 1 of 2013

Union Public Service Commission

APPELLANT

Vs

The Registrar, Central Administrative Tribunal

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 5 LLN 690 : (2014) 1 MLJ 56

Hon'ble Judges : N. Paul Vasanthakumar, J;K. Ravichandra Baabu, J

Bench : Division Bench

Advocate : R. Priyakumar, for the Appellant;

Judgement

N. Paul Vasanthakumar, J.—This Writ Petition is filed by the Union Public Service Commission, to quash the Order of the First Respondent

herein made in O.A. No. 1044 of 2010, dated 21.2.2013. The above said O.A. was filed by the Second Respondent herein, to direct the

Petitioner herein to consider the Application submitted by her for the post of Examiner of Trade Marks and Geographical Indication (Serial No. 1

of Advertisement No. 12/2009), published by the Petitioner herein. The Second Respondent herein, prior to her submission of Application,

worked as Junior Lawyer for the period from 22.10.2003 to 30.11.2007 and thereafter, she was working as an Examiner on contract basis in the

office of the Intellectual Property Office, Trade Mark Registry, Chennai, from 6.12.2007 till the date of submission of her Application. The Second

Respondent herein applied for the said post, which was duly acknowledged by the Petitioner herein. However, she was not called for interview

and the candidates, who applied along with her, were called for interview held on 6th to 8th September, 2010, at New Delhi. Hence, the Second

Respondent herein filed O.A. No. 1044 of 2010 before the Central Administrative Tribunal, Madras Bench, praying for a direction to consider her

Application to the post of Examiner of Trade Marks and Geographical Indication.

2. During the pendency of the said O.A., an interim Order was passed to call the Second Respondent for interview and accordingly, she was also

called for interview and the result of the Second Respondent herein is withheld. The Central Administrative Tribunal finally allowed the O.A. on

21.2.2013, with a direction to the Petitioner herein to publish the result of the interview in respect of the Second Respondent and if the Second

Respondent is found eligible to be recommended for selection, she may be considered and appointed for the post of Examiner of Trade Marks

and Geographical Indication, as per Rules.

3. The Tribunal considered the claim of the Second Respondent on the basis of her claim of experience stated in the Application Form claiming

experience from 22.10.2003 to 30.11.2007 as Junior Lawyer and as Examiner on contract basis in the office of the Intellectual Property Office,

Trade Mark Registry, G.S.T. Road, Guindy Chennai-600(sic)032, from 6.12.2007 onwards, for which, the Second Respondent herein also

produced signed Experience Certificate. Subsequently, i.e., before the interview date, on a perusal of the original record, it is seen that the Second

Respondent herein, along with representation dated 25.8.2010, enclosed an Experience Certificate, dated 20.10.2009, which is certified as

follows:

This is to certify that M. Mahalakshmi, daughter of P.G. Mohan, residing at H.18, New No. 35, Central Avenue, Korattur, Chennai-600080 had

been working as a junior lawyer under me representing Civil cases before the Hon"ble High Court and other Subordinate Courts for the period

from 22.10.2003 to 30.11.2007 and she had been paid a sum of Rs. 5,000/- per mensem. She had performed the work allotted to her in an

efficient manner and her conduct is good.

From the above Certificate, it is clear that the Second Respondent herein is having experience as claimed in her Application Form. We have also

perused the Original Application and seen the details stated about the experience in the column provided.

4. Now, the question to be considered is, as to whether the submission of Xerox

copy of the Experience Certificate along with the Application

Form is mandatory or directory.

5. The above said issue was already considered by the First Bench of this Court in W.A. No. 259 of 2013, by Judgment dated 26.4.2013, of

which one of us (NPV, J.) is a party. The Judgments of the Hon"ble Supreme Court reported in Charles K. Skaria and Others Vs. Dr. C. Mathew

and Others, ; and Dolly Chhanda Vs. Chairman, JEE and Others, , was followed and the claim of the candidate was upheld. The relevant portion

of the Judgment reads as follows:

11. 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 Secretary,

TNPSC v. M. Chitra, 2010 (2) MLJ 146 regarding non-production of Community Certificate.

12. 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 to 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 & 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 un-shakeably 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.

13. 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 Dependants 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.

14. 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.

6. At this juncture, the learned Counsel for the Petitioner has relied on an unreported Judgment of the Delhi High Court in W.P. (Civil) No. 13451

of 2009, dated 13.1.2010, wherein, in Paragraph No. 9 of the Judgment, the Delhi High Court has held that, "...depending upon the facts of a

case, there can be some relaxation in the matter of submission of proof and it would not be proper to apply any rigid principle as it pertains to the

domain of procedure". In the said Judgment in Paragraph 10, it was held that, "Insofar as the present case is concerned, there is nothing on record

to suggest that the Petitioner submitted the requisite documents at the appropriate time".

7. Here in this case, the date of interview for all the candidates, who have applied for the post of Examiner of Trade Marks and Geographical

Indication, was on 6th to 8th September, 2010 and the Second Respondent has forwarded the representation with Experience Certificate dated

20.10.2009, as early as on 25.8.2010, thereby, requesting to accept the Experience Certificate as Annexure to her Application for the post of

Examiner of Trade Marks and Geographical indication, which is admittedly prior to the conduct of interview of all other candidates. Hence, the

Judgment relied on by the learned Counsel for the Petitioner is distinguishable to the facts of the present case.

8. At this point of time, the learned Counsel for the Petitioner fairly submitted that if the Second Respondent herein is found eligible for selection,

she will be considered and appointed for the post of Examiner of Trade Marks and Geographical Indication, as per Rules. He would further submit

that the selection of the Second Respondent is not released and appointment is not given, due to the pendency of this Writ Petition. Considering

the facts in this case and of the Judgments referred above, the Order passed by the First Respondent/Central Administrative Tribunal, dated

21.2.2013, is confirmed and this Writ Petition is dismissed. We direct the Petitioner herein/Union Public Service Commission to implement the

Order of the Tribunal, within a period of four weeks from the date of receipt of a copy of this Order. Consequently, connected Miscellaneous

Petition is closed. No costs.