

Writ Petition No. 17676 of 2016

S. Yuvarani v. Chief Judicial Magistrate

2017 SCC OnLine Mad 18565 : (2017) 4 Mad LJ 168

In the High Court of Madras

(BEFORE NOOTY. RAMAMOHANA RAO AND S.M. SUBRAMANIAM, JJ.)

S. Yuvarani Petitioner

v.

The Chief Judicial Magistrate, Vellore, Vellore District
Respondent

Writ Petition No. 17676 of 2016 and WMP. No. 15371 of 2016

Decided on April 3, 2017

For Petitioner: Mr. K. Selvaraj

For Respondent: Mr. M. Baskar

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order of the respondent dated 13.4.2016 in Viduvi. No. SAI/2016, quash the same and consequently direct the respondent to select the petitioner to the post of Office Assistant on the basis of her performance in the written examination.

The Order of the Court was delivered by

NOOTY. RAMAMOHANA RAO, J.:— This writ petition is instituted by a candidate, who applied for recruitment to the post of Office Assistant, but ultimately found her candidature rejected on the ground of her absence at the viva voce test.

2. The Chief Judicial Magistrate, Vellore issued a Notification on 11.9.2015 inviting applications from eligible candidates for recruitment to several posts of Office Assistant. The petitioner responded to the said Notification, as she possessed necessary eligibility qualifications. However, on 13.4.2016, her application has been rejected on the ground that it was not complete in all respects in as much as 'a self addressed and sufficiently stamped postal cover has not been enclosed' to her application. That communication dated 13.4.2016 triggered the present writ petition.

3. While entertaining the writ petition, an interim order was passed by this Court on 11.5.2016 permitting the writ petitioner also to appear for the written examination for the post of Office Assistant slated for 24.5.2016. Accordingly, the writ petitioner did appear for the written test. But, however, when the viva voce test was conducted on 25.5.2016, the writ petitioner was absent at the said test and hence, her candidature stood rejected for further consideration.

4. Heard Sri. K. Selvaraj, learned counsel for the petitioner and Sri. M. Baskar, learned counsel appearing on behalf of the respondent.

5. The learned counsel for the petitioner would urge that rejecting the candidature only on such a technical plea of not enclosing a sufficiently stamped postal cover is too harsh and unjust to deny an opportunity to compete against public employment. Further, there is no communication addressed to the writ petitioner informing her that the viva voce examination will be conducted from 3 PM onwards on 25.5.2016 - the very next date of the written test. For the failure to intimate the date of viva voce test, the petitioner could not appear for the said test and hence, the rejection of candidature of the writ petitioner is totally faulty and unjust.

6. Per contra, Sri. M. Baskar, learned counsel for the respondent would contend that

pursuant to the Notification dated 11.9.2015, as many as 3,520 applications were received and out of them 211 applications were rejected for the reason of non enclosure of self addressed postal cover affixing a postal stamp of Rs. 25/- thereon. Thus, the writ petitioner is one amongst those 211 candidates. However, pursuant to the interim direction granted by this Court on 11.5.2016, a call letter was issued to the writ petitioner on 17.5.2016 permitting her to appear for the written examination slated for 24.5.2016 and the writ petitioner did appear for the written test on 24.5.2016 and she was also one amongst the 54 candidates, who have been provisionally selected and the interviews were also slated to be held on 25.5.2016 from 3 PM onwards. While 52 other candidates appeared for the viva voce test, only two candidates namely the writ petitioner and another candidate Ms. G. Jayalakshmi have abstained from attending the viva voce test and hence, their candidature for recruitment as Office Assistant has not been taken up. The default, according to Sri. M. Baskar, learned counsel for the respondent, is lying entirely on the writ petitioner but not on the respondent.

7. The learned counsel for the writ petitioner would, in reply, contend that there is no information available anywhere that the written examination results will be published on the same day for the short-listed candidates to come to know that they are required to appear for viva voce test to be held on 25.5.2016 and that hence, the failure in appearing for the viva voce test on 25.5.2016 is not directly attributable to any cause on the part of the writ petitioner.

8. After having carefully considered the rival submissions, we feel that certain general directions are required to be issued in this matter so as to ensure that the selections undertaken by the Subordinate Judiciary are not only carried on fairly in all respects, but to the extent possible free from ambiguities. Hence, it is appropriate for us to direct all Recruiting Agencies to adhere to the following directions scrupulously and carefully henceforth:

- (i) The advertisement shall invariably indicate the format to be downloaded by every candidate, for which purpose, the application form shall be displayed on the website.
- (ii) Separate boxes/columns shall be maintained for filling up the information called for from the candidates in a serial order and a separate column shall be maintained with regard to the enclosures to be submitted along with the application form. Such enclosures shall be submitted by all candidates including those sponsored by the Employment Exchange.
- (iii) The date, time and place where the written examination will be conducted shall be indicated preferably in the application form or at least on the website two weeks prior to the date of holding the written examination.
- (iv) The information as to the total number of applications received for each post advertised and as to how many such applications have been accepted and also as to how many are rejected, shall be displayed on the website. Separately, the information as to the reasons why each of the applications have been rejected, shall also be made available on the website, so that the candidates concerned will come to know of the reasons for rejection.
- (v) A minimum of three working days shall be provided to the rejected candidates to rectify any errors found in their application form provided such factors for rejection are non substantive or purely procedural irregularities. If such errors are rectified in time, such candidates be considered as eligible for participation in the selection process. We draw necessary inspiration in this regard from the principle upheld by the Supreme Court in the case of *Dolly Chhanda v. Chairman, JEE* [reported in (2005) 9 SCC 779], the relevant portion of which reads as follows:

“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.”

(Emphasis is played by us)

- (vi) Therefore, for non substantial reasons and for rectification of procedural infirmities, an opportunity for rectification may be provided. All such candidates, who rectify the defects in time, shall be permitted to appear for written examination. On the day of the written test, on the notice board of each examination hall, the necessary information as to when the results of the written test would or likely to be published shall be announced. Preferably a minimum of one or two days interval shall be maintained between the date of publication of results and the information about the provisionally selected candidates displayed and the viva voce test.
- (vii) The requirement to maintain this time gap is essential because all those candidates, who have taken the written examination may not hail from the same district or the local area where the written test is conducted and they may have been drawn from far off places also. Therefore, it may not be practicable for them to stay back at the place where the written test was conducted for a number of days only to come to know firstly of their result and secondly for attending the viva voce test. Hence, even if they have left the examination centre in a hurry to reach their destination, the candidates may come to know about their provisional selection by visiting the website concerned later on. Such a procedure would avoid allegations and counter allegations that the candidates are not informed of their results, but yet the selections are finalised.

9. In the instant case, Mr. M. Baskar, learned counsel for the respondent has placed before us the instructions passed on by the Chief Judicial Magistrate to all the invigilators, who are posted for conducting the examination on 24.5.2016. Instruction No. 6 thereof reads as under:

“Result shall be published today evening at CJM Court notice board”

whereas Instruction No. 7 reads as under:

“No separate intimation will be given for selected candidates.”

10. Further, Instruction No. 8 reads as under:

“Selected candidates shall appear for interview on 25.5.2016 at 3.00 PM.”

11. Since these instructions are only issued to the invigilators, one is left wondering whether these instructions have also been displayed on the notice board or not. There is an oral assertion by the learned counsel for the respondent that these instructions have also been displayed, which was equally refuted by the learned counsel for the writ petitioner. Since there is an assertion and denial about a factum, it may not be possible for us to render a firm finding of fact about the intimation percolating to all candidates that the results of the written examination would be displayed on the

notice board of the Chief Judicial Magistrate's Court on the same day.

12. But, however, we draw a little comfort from the fact that out of 54 provisionally selected candidates, 52 of them have turned up for the viva voce test barring the writ petitioner and another candidate G. Jayalakshmi. Hence, we can infer that the information relating to the publication of results and also the viva voce test to be held from 3 PM onwards on 25.5.2016 may have been displayed on the notice Board and it did receive the necessary attention. Hence, in future, to avoid any such controversy getting repeated, we direct that in each of the examination halls, instructions shall be published to enable the attention of all the candidates to be drawn to the same. Even in the examination halls also, such information must be read out by all the invigilators much prior to the commencement of the examination and every invigilator must also vouch for such information being announced in the examination hall prior to the commencement of the examination by issuing a necessary certificate to the Chief Judicial Magistrate or Recruiting Agency concerned.

13. In view of the fact that selections were already finalised and the selected candidates were also appointed and that there is no specific fault attributable to them, we cannot set aside their selections nearly after one year and also in view of the fact that the selected candidates have not been impleaded as party respondents to this writ petition and in view of the fact that no amendment of the prayer was also sought for, we refrain ourselves from interfering with the selections already finalised. We hope and trust that henceforth the selection/recruitment undertaken by the Subordinate Judicial Officers will not leave room for any such ambiguities or uncertainties.

14. With this, the writ petition is disposed of. No costs. Consequently, the above WMP is closed.

15. Registry shall take necessary steps to place a copy of this order before My Lord The Honourable The Chief Justice so as to enable all the Recruiting Agencies, subordinate to the High Court, to follow the directions contained in this judgment henceforth whenever the recruitment process is undertaken by them.