

MADRAS HIGH COURT**Bench: Hon'ble Mr. Justice Battu Devanand****Date of Decision: 06.11.2023**

P.(MD) No.433 of 2017and
W.M.P.(MD) Nos.345 of 2017 and 5538 of 2018

M.Kalpana**... Petitioner****Vs.****The Secretary****... Respondent****Sections, Acts, Rules, and Articles Mentioned:**

- Article 226 of the Constitution of India
- Section 41A of the Criminal Procedure Code (CrPC) (mentioned in the user's provided sample headnotes, not directly in the judgment text)
- Instructions to Candidates appearing for descriptive type examination

Subject of the Judgement:

Invalidation of the petitioner's answer paper in the Combined Civil Services Examination-II Group-II Services conducted by the Tamil Nadu Public Service Commission and subsequent directive for re-evaluation and consideration for appointment.

Headnotes

Writ Petition – Invalidating Answer Paper – Petitioner's essay answer invalidated in Combined Civil Services Examination-II Group-II Services by Tamil Nadu Public Service Commission – Invalidation challenged as illegal, seeking re-evaluation and consideration for appointment. [Para 1]

Eligibility and Examination Performance – Petitioner, successful in preliminary test and main examination, attended interview and counselling – Not selected due to invalidated essay answer paper in Part-B, leading to total score below cut-off. [Para 3-5]

Invalidation Grounds – Respondent's invalidation of answer paper based on impertinent remarks – Petitioner's conclusion in essay with "Jai Hind, Let us live united with nature" deemed irrelevant by respondent. [Para 8, 16]

Legal Contention – Petitioner argues relevance of concluding remarks to essay topic, challenging invalidation as illegal – Respondent justifies invalidation based on examination instructions prohibiting irrelevant remarks. [Para 5, 11, 17-18]

Judicial Analysis and Decision – Court finds petitioner's conclusion in essay relevant and appropriate, not impertinent – Invalidation by respondent deemed illegal, unjust, and arbitrary, violating Articles 14 and 21 of the Constitution of India. [Para 19-25]

Directions Issued – Respondent directed to validate and award marks to petitioner's answer paper – If qualifying marks achieved, petitioner to be appointed within four weeks from order receipt. [Para 26]

Referred Cases with Citations:

- Secretary, Tamil Nadu Public Service Commission Vs. A.B.Natarajan and others (2014) 14 SCC 95
- The State of Tamil Nadu and others Vs. G.Hemalathaa and another (2020) 19 SCC 430

Representing Advocates:

- For Petitioner: Mr. G. Karthik
- For Respondent: Mr. V. Panneer Selvam, Standing Counsel

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration declaring the invalidation of the petitioner's answer paper (Registration No.050130120) in Essay Part-B (Main Exam) for recruitment to posts included in Combined Civil Services Examination II Group-II Services (2013-2014) conducted by the respondent on 08.11.2014 as illegal and consequently to direct the respondent to evaluate the petitioner's answer paper (Registration No.050130120) in Essay Part-B (Main Exam) and award marks and consider the petitioner for appointment to the posts included in Combined Civil Services Examination-II Group II Services within the time stipulated by this Court.

ORDER

This Writ Petition has been filed for issuance of Writ of Declaration declaring the invalidation of the petitioner's answer paper (Registration No.050130120) in Essay Part-B (Main Exam) for recruitment to posts included in Combined Civil Services Examination-II Group-II Services (2013-2014) conducted by the respondent on 08.11.2014 as illegal and consequently to direct the respondent to evaluate the petitioner's answer paper (Registration No.050130120) in Essay Part-B (Main Exam) and award marks and consider the petitioner for appointment to the posts included in Combined Civil Services Examination-II Group II Services within the time stipulated by this Court.

2. Heard Mr.G.Karthik, learned counsel for the petitioner and Mr.V.Panneerselvam, learned Standing Counsel appearing for the respondent and perused the material available on record.

3. Learned counsel for the petitioner submits that in pursuance to the Advertisement No.14/2013, dated 05.09.2013 issued by the respondent Public Service Commission for recruitment to the posts included in Combined Civil Services Examination-II Group-II Services, the petitioner applied for the same under BC Woman (PSTM) and her Registration Nnumber is 050130120. The preliminary test was conducted on 01.12.2013 and the petitioner was successful in the preliminary test. Thereafter, she was permitted to participate in the main examination conducted on 08.11.2014. In the forenoon, Part-A examination on General Studies was conducted and in the afternoon, Part-B exam on Essay was conducted.

4. On 09.04.2015, the petitioner was called for the certificate verification. She proved her eligibility in the certificate verification. Thereafter, on 15.07.2015, the petitioner attended interview for 40 marks held. Further, she was called for the counselling on 31.08.2015. In pursuance to the counselling, she was not selected on the ground that she had secured only 184 marks in total. The petitioner was very hopeful that she would certainly

get more than the cut-off marks of 190 in total. Hence, the petitioner made queries as to the marks obtained by her in every exam and interview. The petitioner came to know that she was awarded 160 marks in Part-A and 24 marks in interview and in Part-B, the answer paper itself was made invalidation and not evaluated. Without the marks in Part-B exam, the petitioner has secured 184 and so if some more marks would have been given in Part-B exam, certainly the petitioner would have been selected. Therefore, the petitioner made further queries as to how the Part-B answer paper was made invalid. The petitioner applied under R.T.I Act and the petitioner got the reply with much difficulty only after approaching the Information Commission. The appellate authority at last served the reply dated 22.12.2016 stating that her answer paper in Part- B has been treated as invalid, since the petitioner has written something irrelevant to the questions on the last page of the answer paper.

5. On a perusal of the answer paper of the petitioner, it is seen that the answer to the question "Write a detailed account on importance and conservation of natural resources" the petitioner has concluded by writing as "Jai Hind, Let us live united with nature". According to the petitioner, it is very much relevant to the question as the concluding remarks to the answer. Learned counsel for the petitioner submits that invalidating the answer paper is *per se* illegal and the same is not sustainable and the petitioner is at loss and the last line is relevant to the question and the respondent has mechanically held as invalid without any application of mind.

6. Learned counsel for the petitioner has placed reliance on the Judgement of the Hon'ble Supreme Court in ***Secretary, Tamil Nadu Public Service Commission Vs. A.B.Natarajan and others etc⁽ⁱ⁾***.

7. A counter affidavit has been filed by the respondent.

(i) (2014) 14 SCC 95

8. Learned Standing Counsel appearing for the respondent submits that in the main written examination – Part – B, examination on essay, in the answer for question number 2(a) “Write a detailed account on importance and conservation of natural resources”, the petitioner has written some impertinent remarks in the answer i.e., at the end of the answer, the petitioner has written the words 'Jai Hind' which are irrelevant to the question. As such, the petitioner had violated the instructions under para - 16(iii) of the Instructions to Candidates appearing for descriptive type examination and hence, the answer paper of the petitioner was invalidated by the Commission.

9. He would draw attention of this Court to para 16(iii) of the instructions to candidates appearing for descriptive type examination, which reads as follows:

“Impertinent Remarks:-

“Candidates should not write irrelevant or impertinent remarks or any appeal or any marks revealing identity of the candidates or irrelevant matter including an appeal or invoking sympathy of the examiner for higher marks in the main or additional answer books. The candidates who violate these Instructions will be disqualified to that recruitment”.

10. Learned Standing Counsel would also draw the attention of this Court to para-8 in the answer book, which reads as follows:

“Candidates should not write irrelevant or impertinent remarks or any appeal or any marks revealing identity of the candidates or irrelevant matter including an appeal or invoking sympathy of the examiner for higher marks in the question - cum- answer booklet. Such remarks, if found to be revealing the identity of the candidates he/she will be disqualified for the recruitment.”

11. Learned Standing Counsel appearing for the respondent submits that the petitioner in her letter dated 27.05.2016 had sought for reason for invalidation

and the respondent in office proceedings No. 3623/RID 3/ED-A2/2016 dated 22.11.2016 gave a reply to the petitioner stating the reason for invalidation together with a copy of her answer papers. He also submits that the petitioner has violated the instructions issued by the respondent to candidates appearing for competitive examination and therefore, her claim to evaluate her answer paper does not hold good.

12. Learned Standing Counsel for the respondent has placed reliance on the Judgement of the Hon'ble Supreme Court in ***The State of Tamil Nadu and others Vs. G.Hemalatha and another⁽ⁱⁱ⁾***.
13. Having heard the submissions of the respective counsels and upon careful perusal of the material available on record, there is no dispute with regard to the admitted facts in this case.
14. The only issue to be considered in this writ petition is whether the invalidation of the petitioner's answer paper is right or not in view of the facts and circumstances.

(ii) (2020) 19 SCC 430

15. Learned Standing Counsel appearing for the respondent has produced a separate typed set of papers, wherein, revised instructions to the candidates issued by the respondent has also been annexed. For proper adjudication of the case, Instructions I to VI under the head "Invalidation" issued to the candidates appearing for Descriptive Type Examination are extracted hereinunder:

"Invalidation:

I. Usage of ink other than Blue or Black (Fountain pen or Ball pen or Gel ink). Applicant should use only any one of the two colours. If the applicant uses blue ink he / she should use the same blue ink in the entire answer book for all purposes including answering, drawing, underlining, highlighting etc.. Likewise if the

applicant uses black ink he should use the same black ink in the entire answer book for all purposes. He should not use both blue and black ink in an answer paper. For this purpose applicants should keep sufficient number of additional pens of same type pens with same colour ink and same shade.

II. Usage of whitener, sketch pens, pencil, colour pencils, multi colour pens, Crayons or any other writing materials, for any purpose.

III. Writing their Register Number in places other than the space specified, in the answer book.

IV. Writing religious symbol, writing their name, signature, phone number, Cell phone number, initials, address and writing any other name, initial or address in the answer book other than the one given in the Question Paper or in the answer book or in the General Instructions.

V. Appealing the Examiner in the answer book invoking sympathy of Examiners in connection with their results.

VI. Applicants writing anything unconnected to the Question, or any impertinent remarks and/ irrelevant matter revealing his identity.”

16. The contention of the respondent is that in the main written examination, while the petitioner writing an essay in Part-B examination, for Question No.2(a), “write a detailed account on importance and conservation of natural resources”, the petitioner has written some impertinent remarks in the answer, i.e., at the end of the answer, the petitioner has written the words “Jai Hind”, which are not relevant to the question. As such, the petitioner had violated the instructions under Part 16(iii) of the Instructions to Candidates appearing for descriptive type examination and accordingly, the answer paper of Part-B examination of the petitioner was invalidated by the respondent.

17. It is the contention of the petitioner that while writing essay in Part-B examination, she concluded it by writing as “Jai Hind, Let us live united

with nature” and the petitioner contends that it is very much relevant to the question as the concluding remarks to the answer.

18. The respondent relied on Part-16(iii) of the Instructions to Candidates, wherein it is instructed that candidate should not write irrelevant or impertinent remarks. The ordinary meaning for the word “impertinent” means not pertinent to a particular matter. While the respondent invalidating the answer paper of the petitioner on the ground that the petitioner made some impertinent remarks at the end of the essay, it ought to have considered the entire essay written by the petitioner. Only the competent examiner can decide whether the words written as “Jai Hind - Let us live united with nature” can be considered as the concluding remarks to the answer to the question in Part-B, which was an issue with regard to the conservation of natural resources. The respondent cannot take a decision invalidating the answer paper of the petitioner coming to a conclusion that the said words written by the petitioner at the conclusion of the essay are impertinent.

19. This Court intends to visualise this issue in a different angle. For development and prosperity of the country, the conservation of natural resources is very essential and important. It is the duty of every citizen to safeguard the natural resources available in the country. Those persons, who are having the idea of “patriotism”, definitely safeguard the natural resources for the benefit of the future generations. Besides that, natural resources are related to the nature. There is no any dispute that we have to live with the nature. As such, while writing essay, on the issue of importance and conservation of natural resources, at conclusion writing as “Jai Hind – Let us live united with nature” by the petitioner is very relevant and appropriate to the question and as such, the said writing cannot be treated as impertinent remarks or to give some indication to the examiner about her identity.

20. "Jai hind" or "victory to India" is the most commonly uttered slogan in India, whether it is at the end of the school prayers by children or at the end of a speech by eminent persons. It is the last word to be seen in several communications wherever the patriotic fervour is invoked towards the motherland i.e., India or Bharat. This slogan or term JAI HIND is said to be coined by an Indian revolutionary Champaka Raman Pillai during British raj in 1907. But its importance became significant after Nataji Subhash Chandra Bose immortalised it as his armed force INA' s battle cry.

21. We need to refer to these slices of our recent history, in order to look at, with a proper perspective, the crux of the disputed words in the context of the present case. While writing an essay on "Importance and conservation of the natural resources" some young scholar or educated youth would naturally become emotional and while discussing the ways and means of protecting nature and conserving natural resources in the interest of society at large, may spontaneously feel patriotic.

22. In such a moment of reflection and soul searching, for some youth, it's a natural way of expression to end an essay or a speech with some patriotic slogan summarizing the essence of the topic such as "Jai Hind". So, in this case, "Jai Hind - Let us live united with nature." appears to be a natural, spontaneous and effective culmination of the essay on the given topic rather than any tacit signal of attempting any malpractice.

23. For the aforesaid reasons, in our considered opinion, the respondents ought not to have invalidated the answer sheet Part-B examination of the petitioner in a routine manner.

24. This Court has gone through the reliances placed by the learned counsel for the petitioner and the learned counsel for the respondent. The proposition of law in the said judgments relied by them cannot be disputed. But, looking at the facts of the instant case, this Court is of the view that the said judgments would be of no helpful to them. Admittedly, in the reliances placed by the learned counsel on either side, the issue considered there was with regard to making some marking on the answer sheet and using different colours of pens or pencils, which were not permitted and putting certain religious symbols and deliberately keeping some pages of answer books as blank. Considering these aspects, in the said judgments, the acts of the candidates were considered as making attempt to give some indication to the examiners about their identity. In the present case, some words written by the petitioner at the end of the essay to answer the question are part and parcel of the essay or it is to be treated as to give some indication to the examiner about the petitioner's identity. In view of the above opinion expressed by this Court that these words "Jai Hind – Let us live united with nature" are part and parcel of the essay that has been written by the petitioner at the conclusion of the answer, the decisions are not coming in the way of the petitioner.

25. For the above said reason, in the considered opinion of this Court, the petitioner has made out a strong case for interference of this Court under Article 226 of the Constitution of India and this Court is holding that the action of the respondent in invalidating the petitioner's answer paper in essay Part-B (Main Examination) for recruitment to the post included in Combined Civil Services Examination-II Group-II services 2013-14 conducted by the respondents on 08.11.2014 as illegal, unjust and arbitrary and violative of Articles 14 and 21 of the Constitution of India.

26. Accordingly, this Writ Petition is allowed with the following

directions:

i. The respondent is directed to validate the petitioner's answer papers in essay Part-B (Main Examination) and award marks; and ii. Basing on the marks awarded in Part-A and Part-B, if the petitioner secured requisite marks, the respondent shall appoint her to the post included in Combined Civil Services Examination-II Group-II Services within a period of four weeks from the date of receipt of a copy of this order;

27. There shall be no order as to costs.

28. Consequently, connected miscellaneous petitions are closed.

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