

## The State Of Tamil Nadu vs G. Hemalathaa on 28 August, 2019

**Equivalent citations: AIR ONLINE 2019 SC 969, (2019) 11 SCALE 537, (2019) 2 CLR 906 (SC), (2019) 3 SERVLJ 214, (2019) 4 PAT LJR 214, (2019) 4 SCT 237, (2019) 6 ALL WC 5215**

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**Bench: Hemant Gupta, L. Nageswara Rao**

Non-Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal No.6669 of 2019  
(Arising out of SLP (C) No.14093 of 2019)

THE STATE OF TAMIL NADU & ORS.

.... Appellant(s)

Versus

G. HEMALATHAA & ANR.

... Respondent (s)

JUDGMENT

L. NAGESWARA RAO, J.

Leave granted.

1. The Respondent is an Advocate enrolled in the Bar Council of Tamil Nadu. The Tamil Nadu Public Service Commission (for short, 'the Commission') issued a Notification dated 09.04.2018 inviting applications from eligible candidates for filling up 320 vacancies to the posts of Civil Judges in the Tamil Nadu State Judicial Service. The Respondent was successful in the preliminary examination conducted on 09.06.2018. The written test was conducted on 11th and 12th August, 2018. Results of the written test were announced on 19.09.2018 and the name of the Respondent did not appear in the list of successful candidates. Interviews were conducted from 27.09.2018 to 05.10.2018 and the final results of successful candidates were published on 05.12.2018. The Respondent came to know that another candidate belonging to the same community to which she belongs (Most Backward Class) was selected in spite of her performance not being satisfactory. The Respondent made a representation to the Commission to furnish her marks in the written examination. On 07.01.2019, the Commission conveyed to the Respondent that her Law Paper 1 written examination was invalidated in view of violation of the Instructions to Applicants (hereinafter referred to as 'the Instructions') issued by the Commission.

2. The Respondent filed a Writ Petition in the High Court for a direction to declare her result and appoint her as a Civil Judge, provided she has secured more marks than the last selected candidate in the Most Backward Class category. The High Court directed the Commission to announce the results of the Respondent in Law Paper-1 of the main written examination. If she was found qualified, the Commission was directed to conduct the interview of the Respondent as a special case. The Commission was further directed to complete the exercise and announce the final result of the Respondent within a period of four weeks from the date of the judgment. Being dissatisfied with the said judgment of the High Court, this appeal is filed.

3. The Respondent contended before the High Court that she did not violate any of the conditions stipulated by the Commission. She complained that the Commission wrongfully invalidated her Law Paper-1. The High Court summoned the answer sheets and found that the Respondent had underlined the answer sheet with pencil at several places in Law Paper-1. The High Court was also of the opinion that such marking was in clear violation of Instruction 22 (1)(II) of the Instructions issued by the Commission which prohibits candidates from using a pencil for any purpose. Instruction 22 (1) (II) provides that:

“Penalty for violation of Commission’s instruction in the descriptive type examination. The answer books of the applicants will be invalidated / marks deducted / debarred for violations of any one or more of the instructions, besides initiating criminal action wherever necessary.

1) Invalidation I. ...

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

4. When the Respondent was confronted by the High Court by showing the answer sheet, she submitted that it may have been done inadvertently and due to anxiety. The Respondent pleaded for leniency and prayed that a direction may be given to the Commission to declare her as having been successful in the main examination. The High Court accepted the submission of the Respondent that the underlining of some portions of the answer sheet in pencil was done unwittingly and inadvertently and that she did not gain any advantage from such marking. Being of the view that the Respondent cannot be disqualified for a mistake committed inadvertently, the High Court allowed the Writ Petition.

5. Mr. R. Venkatramani, learned Senior Counsel for the Appellant submitted that the Instructions given to candidates taking examinations for selection to the post of Civil Judges clearly bars the candidates from using a pencil in any manner. The Instructions given to the candidates are mandatory and cannot be relaxed. Mr. Venkatramani contended that the initial stand taken by the Respondent that she did not use the pencil disentitles her from the relief sought for. No lenient view can be taken in cases of violation of the mandatory Instructions as the order in favour of the Respondent will be treated as a precedent. If the Respondent is given the relief sought for the other candidates who have been disqualified will also claim the same relief.

6. Ms. V. Mohana, learned Senior Counsel appearing for the Respondent vehemently argued that we should not exercise our discretion under Article 136 of the Constitution of India. According to her, there is no substantial question of law in the S.L.P. warranting our interference. She submitted that an error was committed by the Respondent which was rightly condoned by the High Court. She made a fervent appeal to us that the career of a meritorious backward class candidate should not be nipped at the bud.

7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission<sup>1</sup>.

8. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in Taherakhatoon (D) By LRs v. Salambin Mohammad<sup>2</sup> and Chandra Singh and Others v. State of Rajasthan and Another<sup>3</sup> in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

9. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said M. Vennila v. Tamil Nadu Public Service Commission, (2006) 3 Mad. LJ 376 (1999) 2 SCC 635 (2003) 6 SCC 545 that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In Umesh Chandra Shukla v. Union of India<sup>4</sup>, Venkataramiah, J., held that:

“13.... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

11. Roberts, CJ. in Caperton v. A.T. Massey<sup>5</sup> held that:

(1985) 3 SCC 721 556 U.S. 868 (2009) “Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the

extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism:

“Hard cases make bad law.”

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.

13. In view of the aforementioned, the judgment of the High Court is set aside and the appeal is allowed.

.....J. [L. NAGESWARA RAO] .....J. [HEMANT GUPTA] New Delhi,  
August 28, 2019