



IN THE HIGH COURT OF STATE OF ANDHRA PRADESH: AMARAVATI

WRIT APPEAL NO.812 OF 2021

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W.A.No.812 OF 2021

Potluri Anjali
d/o Hanumantha Rao
r/o Zarugumalli Mandal,
Prakasam District

..... Appellant

Vs.

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The State of Andhra Pradesh,
Rep. by its Principal Secretary,
School Education (Exams) Department
Secretariat, Velagapudi and 6 others

..Respondents

! Counsel for the petitioner : Mr. P. Nagendra Reddy

^ Counsel for the Respondent Nos. 1 to 5 : Mr. Bhim Rao, learned Government
Pleader for Services - III

Counsel for Respondent Nos. 6 & 7 : Mrs. A. Varalakshmi

JUDGMENT PRONOUNCED ON: 28.01.2022

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?
2. Whether the copies of judgment may be marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?



*** HON'BLE MR. JUSTICE PRAHANT KUMAR MISHRA, CHIEF JUSTICE**

AND

HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY

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? Cases referred

1. 2004 AIR SCW 5699
2. Civil Appeal No.6860 of 2021 dated 18.11.2021
3. 1980 AIR 1230
4. (2005) 9 Supreme Court Cases 779



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AND

HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY

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(Proceedings through Physical mode)

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..... Appellant

Versus

The State of Andhra Pradesh
Rep. by its Principal Secretary
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Secretariat, Amaravati and 6 others

.... Respondents

Counsel for the Appellants : Mr. P. Nagendra Reddy

Counsel for Respondent Nos. 1 to 5 : Government Pleader for Services-III

Counsel for Respondent Nos. 6 & 7 : Mrs. A. Varalakshmi

JUDGMENT

Dt.28.01.2022

(Per M. Satyanarayana Murthy, J)

Aggrieved by the order passed by the learned single Judge in W.P.No.9827 of 2021 dated 06.10.2021, the petitioner - appellant preferred this writ appeal under Clause 15 of Letter Patent. The learned single Judge dismissed the writ petition, denying the relief of writ of mandamus, as the petitioner failed to submit her sub-caste certificate for verification within the stipulated time.



The appellant herein was the writ petitioner and the respondents herein were the respondents before the learned single Judge. They will hereinafter be referred as arrayed in W.P.No.9827 of2021 for the sake of convenience.

The writ petitioner – Ms. Potluru Anjali filed the writ petition under Article 226 of the Constitution of India, claiming the following relief:

“to issue a writ order or direction more particularly one in the Writ of Mandamus to declare the action of Respondent Nos. 2 to 5 in not selecting the petitioner as Secondary Grade Teacher by generating the Provisional Selection List to the post of SGT (TEL) under ST (Yanadi) in Prakasam District, duly placing her name above the petitioner above the name of Respondent No.6 as illegal, arbitrary and consequently direct the respondents to select the petitioner as Secondary Grade Teacher by issuing fresh provisional list to the post of SGT (TEL) under ST (Yanadi) in Prakasam District, duly placing the name of the petitioner above the name of Respondent No.6, pursuant to Memo No.ESE02-20022/66/2020-RECTMT-CSE dated 21.01.2021 issued by the second respondent with all consequential benefits.”

The first respondent vide G.O.Ms.No.67 dated 26.10.2018 issued Scheme of Selection Rules for Teacher Eligibility Test-cum-Teacher Recruitment Test (TET-cum-TRT). The petitioner appeared for online examination, secured Rank No.3,726, whereas, Respondent No.6 secured 3,916 and Respondent No.7 secured Rank No.4,412. Subsequently, the respondents displayed provisional selection list (Phase-I), but the name of the petitioner and names of Respondent Nos. 6 & 7 were not found in Phase-I List. Later, the respondents published provisional selection list SGT (Phase-II) and in the said list, the names of Respondent Nos. 6 & 7 were found. Even though, the petitioner secured better rank, her name was not found. The same provisional list was repeated for another five times, even when the official respondents published the provisional selection. The official respondents informed that Scheduled Tribe (Yanadi) and Scheduled Tribe (Chenchu) candidates are eligible for



selection in the schools of Tribal non-scheduled areas in Ashram schools in Prakasam District. As no column is provided in online application specifying the sub-caste of schedule tribe candidates, the IT cell which is under the control of the second respondent sent message to all the Scheduled Tribe candidates instructing them to submit the sub-caste certificate through online except to the petitioner. Since the petitioner did not submit the sub-caste certificate that she belongs to Schedule Tribe i.e. sub-caste (Yanadi), the respondents did not consider her candidature for selection, but Respondent Nos. 6 & 7 were considered even though they secured lesser marks than her. The petitioner submitted applications to Respondent Nos. 2 to 5 informing that she did not receive SMS for submitting the sub-caste certificate through online. The second respondent also directed the IT cell to generate the provisional selection list to the post of Secondary Grade Teacher (Telugu) under Scheduled Tribe (Yanadi) in Prakasam District duly considering petitioner's Hall Ticket, Rank under Scheduled Tribe (Yanadi) Quota. The IT cell on verification found that, since the SMS was not being reached, they tried for eight times but they could not succeed. Therefore, the respondents should have made a phone call to her mobile phone number or should have sent a letter to petitioner's residential address informing her that she is required to submit the caste certificate through online. But the official respondents did not make any attempt to communicate the same, calling upon her to submit sub-caste certificate of Scheduled Tribe (Yanadi) through online and therefore, she could not submit her sub-caste certificate to the official respondents within time, thereby, she was not selected for the post, though she secured more marks than Respondent Nos. 6 & 7. On the representation made by the petitioner,



no appropriate action was taken by the official respondents. Since the petitioner did not receive SMS from the IT cell of the second respondent and as it is purely the mistake on the part of the second respondent office, even though the petitioner obtained better rank than Respondent Nos. 6 & 7, she did not get selection as Secondary Grade Teacher and the petitioner was deprived of an opportunity in public employment as Secondary Grade Teacher (Telugu) and the petitioner sought a direction as stated supra.

The second respondent filed counter affidavit in the writ petition admitting about the petitioner's participation in the selection process, securing higher rank than Respondent Nos. 6 & 7, non-selection is due to her failure to submit sub-caste certificate of Yanadi under Scheduled Caste. The second respondent also admitted that, the petitioner secured 52.5333 marks in the Entrance Examination and obtained 3276 rank. After declaration of results, as per the norms of notification, a telephonic communication was sent to all the selected candidates to upload sub-caste certificate. Accordingly, the IT cell which is under the control of the second respondent sent messages to all the Scheduled Tribe candidates instructing them to submit the sub-caste certificate through online. Accordingly, messages were sent to all the candidates including the petitioner to the mobile number given by her at the time of submission of application. The messages were sent to the petitioners continuously from 11.03.2020 to 17.03.2020. But, the messages could not reach the petitioner, as such, she did not submit her sub-caste certificate, thereby, she was disqualified.



While submitting an application itself, it was clearly informed to submit only proper phone number for communication and the same shall be maintained till completion of recruitment process, as such, there is no deviation in the process of communication sent to the petitioner by SMS including all candidates, to upload sub-caste certificate. The petitioner failed to upload her sub-caste certificate inspite of several messages and no response was received from the petitioner and the message was sent to the petitioner mobile number 9666256582 the details of result is shown in the following statement:

To mobile no	On date	Delivered on	Error text
9666256582	2020-03-11 13:12:24	2020-03-11 16:05:34	VMSC: unexpected response received
9666256582	2020-03-11 16:05:32	2020-03-11 20:05:33	VMSC: unexpected response received
9666256582	2020-03-12 16:04:54	2020-03-12 20:03:36	VMSC: unexpected response received
9666256582	2020-03-12 16:04:54	2020-03-12 20:03:36	VMSC: unexpected response received
9666256582	2020-03-13 12:03:44	2020-03-13 15:33:13	Absent subscriber
9666256582	2020-03-13 16:03:06	2020-03-13 17:06:35	Absent subscriber
9666256582	2020-03-14 12:03:32	2020-03-14 19:26:22	Absent subscriber
9666256582	2020-03-15 12:03:18	2020-03-15 16:04:20	Absent subscriber
9666256582	2020-03-15 16:03:07	2020-03-15 20:03:19	Absent subscriber
9666256582	2020-03-16 12:04:29	2020-03-16 16:06:30	Absent subscriber
9666256582	2020-03-16 16:06:10	2020-03-16 20:06:24	Absent subscriber
9666256582	2020-03-17 12:04:14	2020-03-17 16:05:17	Absent subscriber

The office of the second respondent i.e. IT cell repeatedly sent SMS to the petitioner eleven times. In turn, the response of the petitioner's phone is '**unexpected response received**' four times and for the last eight SMS, response was '**absent subscriber**', as stated in the table. The details of statement and delivery of response are available and therefore, denial of employment to the petitioner is only on account of her failure to



submit her sub-caste certificate, but not otherwise. Accordingly, provisional list was finalized and candidates were selected by duly following the prescribed procedure. The petitioner failed to submit her certificates, as per the norms prescribed in notification at Point No.18 under the heading of preparation of provisional lists @ vi) next candidate was selected. The relevant rule is extracted hereunder:

“(vi) If the certificates are not found to be genuine/correct and if the candidate fails to produce the certificates required at the time of verification or if the candidate is absent for verification of certificates, such candidates shall forego the right of selection, and next eligible candidate shall be considered for certificates verification.”

As the petitioner failed to submit her details in response to the message sent to her, the next immediate candidate was selected and given appointment and the same is done without any deviation. The respondents admitted about representation dated 11.04.2021 stating that the petitioner has not received any communication from the respondents. Immediately said fact has been verified with the IT cell and came to know that there is no miscommunication in sending the message to the petitioner and particular message was sent to her continuously for seven days. However, by considering the petitioner's representation, a show cause notice was issued to the fourth respondent on 20.11.2020 calling for explanation. In response, the fourth respondent submitted report on 19.02.2021. After considering the explanation submitted by the unofficial respondent, it was found that there is no deviation in the recruitment procedure, that the second respondent was not at fault and finally requested to dismiss the writ petition.



Respondent Nos. 6 & 7 filed common counter affidavit, denying material allegations, while drawing attention of this Court to Clause 20 (iv) of the Information Bulletin and would contend that, when the petitioner failed to submit her sub-caste certificate to the second respondent, denial of appointment to her, though she secured better rank in the examination is not illegal. Respondent Nos. 6 & 7 reiterated the contentions raised by the second respondent with regard to sending SMS and failure of the petitioner to submit her sub-caste certificate, thereby, Respondent Nos. 6 & 7 were selected who are in the next rank to the petitioner and thus, there is no illegality in their appointment as Secondary Grade Teacher (Telugu) under the quota meant for Scheduled Tribe, since Respondent Nos. 6 & 7 uploaded their sub-caste certificates on receipt of SMS from the second respondent. Hence, there is no illegality on the part of Respondent Nos. 6 & 7 and requested to dismiss the writ petition.

Considering rival contentions, perusing the material available on record, the learned single Judge held that, the Information Bulletin issued to the candidates also talks about helpline being available from 01.11.2018 till the completion of recruitment, but the petitioner did not avail the facility of helpline and that the petitioner failed to submit her sub-caste certificate for verification as required, within the stipulated time. Whereas, Respondent Nos. 6 & 7 submitted their sub-caste certificates on receipt of SMS through their cell phone number and the petitioner alone is at fault, consequently, not entitled to claim any relief in the writ petition, since the petitioner did not possess any right to claim



appointment, thereby, the question of issue of writ of mandamus does not arise and dismissed the writ petition.

Feeling aggrieved, the present writ appeal is filed raising several contentions, more particularly, failure to provide a specific column in the proforma of application as to sub-caste and non receipt of any information through SMS is not her failure to submit sub-caste certificate (Yanadi) a member of Scheduled Tribe. No negligence is attributable to this petitioner, since she obtained certificate of sub-caste long prior to commencement of selection process i.e. on 20.01.2014, but because of negligence of the official respondents in communicating the same to the petitioner, requiring the petitioner to submit the sub-caste certificate of scheduled caste, she lost her chance of appointment as Secondary Grade Teacher (Telugu) and for the negligence or mistake of the official respondents, the petitioner shall not be put to any loss. But, the learned single Judge did not consider the same in proper perspective and requested to set-aside the order passed by the learned single Judge, while issuing a direction as claimed by the petitioner.

Sri P. Nagendra Reddy, learned counsel for the petitioner contended that, when no communication was received for submission of sub-caste certificate through SMS or through any other authorized mode, no knowledge is attributable to this petitioner regarding requirement to submit sub-caste certificate of Schedule Tribe. Apart from that, there are many situations where SMS would not reach a particular cell phone number, obviously due to poor network and failure of the service provider or for any other reason beyond the control of petitioner and making an attempt to send message which had not reached, admittedly, by the



respondents is not a proper communication. Unless SMS is received by this petitioner, no negligence is attributable to this petitioner for her failure to submit sub-caste certificate.

It is also contended that, when the petitioner obtained sub-caste certificate in the year 2014 itself, actually she belongs to Yanadi community, mere failure to submit an certificate cannot deprive her appointment as Secondary Grade Teacher and placed reliance on the judgment of the Hon'ble Apex Court in ***Dolly Chhanda v. Chairman, JEE***¹ and requested to issue a direction as stated above, setting-aside the order passed by the learned single Judge.

Refuting the contentions of the learned counsel for the petitioner, Sri P. Nagendra Reddy, learned Government Pleader for Services-III heavily relied on the information received from the IT Cell of the respondents, which the respondents extracted in the counter affidavit, to contend that the IT cell of the second respondent made sincere and honest attempt to communicate the requirement of submission of sub-caste certificate to the petitioner, but failed due to different reasons mentioned above. Hence, the second respondent is not at fault and on the other hand, sending SMS is sufficient communication and reaching SMS to the petitioner is not relevant and it is not their duty. In support of his contention, he placed reliance on unreported judgment of the Hon'ble Apex Court in ***State of Uttar Pradesh v. Pankaj Kumar***². On the strength of the principle laid down in the above judgment, learned Government Pleader contended that, the sincere attempt made by the second respondent through fourth respondent to submit sub-caste

1 2004 AIR SCW 5699

2 Civil Appeal No. 6860 OF 2021 dated 18.11.2021



certificate to the petitioner is sufficient to conclude that the petitioner failed to submit her sub-caste certificate within the stipulated time and thereby, her non-selection as Secondary Grade Teacher is not an illegality, in view of Clause 20 (iv) of the Information Bulletin and requested to dismiss the writ appeal, affirming the order passed by the learned single Judge.

Heard Smt. A. Varalakshmi for Respondent Nos. 6 & 7, who supported the action of Respondent No.2 in appointing Respondent Nos.6 & 7.

During hearing, this Court issued a direction to the second respondent to file an affidavit explaining the reasons noted in the table incorporated in the counter affidavit. Accordingly an affidavit is filed on 03.01.2022 explaining the terms of 'error text', viz., 'Barred', 'VMSC', 'Absent Subscriber' and they are reproduced for better appreciation of the case.

1. *BARRED* : Originator (Source Address) or Destination Number is barred by the operator.
2. *# VMSC* : unexpected data : he message SMSC sends to VMSC is recognized but some fields in which VMSC returns uncorrect?.
3. *ABSENT-SUB* : Absent subscriber: Subscriber is in insufficient or out of network range or MS is switched OFF.

Based on the argument of both learned counsel for the petitioner; Respondent Nos. 2 to 4 and perusing the order of the learned single Judge in the Intra Court appeal, the points that need to be answered are as follows:



- 1. Whether the second respondent sent any communication in any authorized mode to the petitioner, calling upon her to submit her sub-caste certificate within the stipulated time and whether sending SMS which is not received by the petitioner is sufficient communication?**

- 2. Whether failure of this petitioner to submit her sub-caste certificate, though she obtained the same more than 6 years ago from the competent authority is a ground to denial of appointment to the petitioner. If not, whether a direction be issued to the second respondent to appoint her to the post of Secondary Grade Teacher (Telugu) under Scheduled Tribe (Yanadi) Quota with all consequential service benefits?**

P O I N T No.1:

The main contention of the petitioner throughout is that, no SMS was received by her from the second respondent or any of the official respondents calling upon her to submit sub-caste certificate. But, this contention is refuted by the respondents contending that SMS was sent to the petitioner calling upon her to submit sub-caste certificate, the same has not been reached to the addressee i.e the mobile phone of this petitioner. SMSs were sent during 11.03.2020 to 17.03.2020 i.e. for one week and they were not received by the petitioner. The petitioner is bound to maintain the same mobile connection with same number to send communication to the petitioner as per the Information Bulletin. Accordingly, she submitted her mobile number to contact her by the official respondents in case of sending any information and they also maintained helpline to provide the details of selection, despite all these precautions taken by the official respondents, the petitioner did not submit sub-caste certificate claiming to be a member of Yanadi



community, which is a Scheduled Tribe, since the post of Secondary Grade Teacher (Telugu) is reserved for “Yanadi” and “Chenchu” communities. The respondents reproduced the details of SMS error description and list of error descriptions in the counter affidavit in the form of questionnaire, the details are already extracted in Page No.5 herein above:

As seen from the contentions raised by the second respondent in the counter affidavit, the respondents received **“unexpected response”** for four messages and for other messages they received information as **‘absent subscriber’** as mentioned in the table under the column **‘Error Text’**. Thus, it is clear from the information furnished by the second respondent that these messages though sent by the originator i.e. second respondent, they did not reach the addressee i.e. the petitioner herein with Mobile No.9666256582. The official respondents never contended that the communication had reached the addressee when sent by SMS by the official respondents calling upon the petitioner to submit her sub-caste certificate between 11.03.2020 to 17.03.2020. Thus, it is unambiguous from the material that, the messages were not reached to the addressee i.e. the petitioner and she did not acknowledge receipt of the same.

Learned counsel for the petitioner would contend that, when SMS were sent to the mobile number of the petitioner, which is an authorized mode, it is deemed to have been served on the petitioner and placed reliance on the judgment of the Apex Court in **State of Uttar Pradesh v. Pankaj Kumar** (referred supra). In the facts of the above judgment, the candidates who were required to appear for the physical fitness test and



document verification were intimated by issuing SMS over the mobile phone, the number of which had been furnished in the application. Several other candidates who had received such SMS had appeared and taken part in the process of document verification and the physical fitness test. The respondent, who had not appeared, made out a grievance about appellants not intimating the respondent through post. The respondent filed the writ petition bearing SS No.693 of 2019 seeking that the appellants herein be directed to complete the document verification and the physical fitness test of the respondent pertaining to his height, weight and chest measurement and to declare the result after completing the process. The learned single Judge arrived at a conclusion that there was inadvertence on the part of the respondents, since the applicant would not have deliberately not participated in the process of recruitment. In that circumstance, as a matter of equitable consideration, the Learned Single Judge had directed the appellants to permit the petitioner to appear for the document verification and physical fitness test for the post of Constable in pursuance to the recruitment notification. The recruiting authority preferred Special Appeal No.366/2019 before the Division Bench of the High Court. The Division Bench having extracted the portion of the observations made by the Learned Single Judge wherein an equitable consideration was made and dismissed the Special Appeal. Aggrieved by the same, Civil Appeal No.6860 of 2021 was preferred before the Apex Court and the Apex Court reversed the findings of the High Court in Division Bench and learned single Judge, holding that it is for the candidate to intimate any change to the authorities, since such change would be within the knowledge of the candidate and it is in his or her own interest such intimation is to be made. In the said case, when



there can be no dispute that the respondent was in possession of the same mobile connection, the detail of which was furnished in the application and the SMS had been sent to the respondent, the respondent having not acted on the same cannot at his own convenience make request to be permitted to participate in the selection process which has already concluded, not having utilized the opportunity which was available to him. It was also noted that the writ petitioner before the learned single Judge therein exhibited casual attitude and declined to accept the contention of the writ petitioner while allowing Civil Appeal No.6860 of 2021. Thus, based on the principle laid down in the above judgment, the learned Government Pleader for Services-III supported non-selection of this petitioner as Secondary Grade Teacher (Telugu) under reserved category for Yanadi and Chenchu castes under Scheduled Tribe quota.

Based on the facts, the Apex Court in ***State of Uttar Pradesh v. Pankaj Kumar*** (referred supra) concluded that the writ petitioner therein is in possession of the same mobile number. Even if there is any change in the mobile number, it is for them to communicate to the office of the respondents with regard to recruitment process if necessary. In the present case, it was not the case of the respondents that the SMS have reached the petitioner, but received different responses as mentioned in the table viz; 'VMSC: unexpected response received' and 'Absent subscriber'. That means that the messages did not reach the cell phone number of this petitioner. In ***State of Uttar Pradesh v. Pankaj Kumar*** (referred supra) the Hon'ble Apex Court did not advert to various



provisions of the Information Technology Act, 2000 (for short 'the Act'), which deals about the service of messages, electronic communication etc.

Undoubtedly, communication made by SMS through mobile or computer is an electronic message. But, electronic message is not defined under the Information Technology Act, 2000. However, 'electronic record' is defined under Section 2(t) of the Act, which means electronic record means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. SMS allegedly sent by the second respondent to the petitioner would fall within 'electronic record' through a communication device as defined under Section 2(ha). According to Section 2(ha) of the Act, communication device means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image. Therefore, the message sent either through cell phone i.e communication device as defined under Section 2(ha) is only an electronic record as defined under Section 2(t) of the Act; by the originator as defined under Section 2(za) of the Act. According to Section 2(za), 'originator' means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary. Therefore, the IT cell of the second respondent is the originator who allegedly sent the 'electronic message' to the addressee – the petitioner herein, as defined under Section 2(b) of the Act. According to Section 2(b), addressee means a person who is intended by the originator to receive the electronic record but does not include any intermediary. Thus, it is clear from the



definitions of ‘electronic record’, ‘communication device’, ‘originator’ and ‘addressee’, that the petitioner is the addressee and the second respondent is the originator, who sent information through communication device as defined under Section 2(ha) of the Act. Such information can be said to be an electronic record as defined under Section 2(t) of the Act.

Section 12 of the Act deals with ‘Acknowledgment of receipt’ and it is necessary to extract the same for better appreciation of the contentions of both parties. Accordingly, it is extracted hereunder:

(1) Where the originator has not 3 [stipulated] that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by— (a) any communication by the addressee, automated or otherwise; or (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.

(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.”

On close analysis of Sub-section (2) of Section 12, where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then, unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator. Sub-section (3) of



Section 12 says that, where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

Here, there was no stipulation by the originator that the electronic record shall be binding only on receipt of such acknowledgment. In such case, Section 12(3) of the Act is applicable and when no acknowledgment was sent by the originator i.e. the second respondent within the time specified, originator is under obligation to give notice to the addressee to treat the electronic record as though it has never been sent. Electronic record received or acknowledged by the addressee though it was never been sent. In the instant case on record, admittedly the originator – the second respondent did not issue any notice to the addressee – petitioner herein giving intimation about sending of electronic record by communication device. Therefore, when the respondent failed to follow the procedure under Section 12(3) of the Act, the Court cannot presume that the SMS were sent to the petitioner i.e. addressee. In the absence of compliance of mandatory requirement under Section 12(3), we are not unable to accept the contention of the second respondent that the SMS is deemed to be served on the addressee i.e the petitioner herein, relying on



the judgment of the Apex Court in ***State of Uttar Pradesh v. Pankaj Kumar*** (referred supra).

The judgment of the Apex Court is distinguishable on facts, as the SMS were sent in the facts of the judgment of the Apex Court in ***State of Uttar Pradesh v. Pankaj Kumar*** (referred supra) and not known whether those SMS were reached to the addressee from the originator. But, in the instant case, SMS were allegedly sent by the originator – second respondent and received error text viz ‘VMSC: unexpected response received’ and ‘Absent subscriber’. In such case, the messages sent by the originator – second respondent can be held to be not reached to the addressee – the petitioner herein and consequently, failure of the petitioner to submit sub-caste certificate as required, in view of the contentions raised by the respondents cannot be held to be negligent or intentional avoidance to submit the required sub-caste certificate, more particularly, when she is claiming reservation under particular sub-caste of Yanadi under Scheduled Tribe reservation quota. But, the learned single Judge did not consider various provisions of Information Technology Act, 2000, and simply concluded that the petitioner failed to submit required sub-caste certificate to claim appointment under reserved category under Scheduled Tribe Quota. The finding of the learned single Judge about service of SMS on the addressee – petitioner herein from the originator – second respondent is *ex facie* erroneous. Therefore, the finding of the learned single Judge regarding service of SMS on the petitioner - addressee from the originator – second respondent is without any basis and contrary to various provisions of Information Technology Act, 2000.



In view of our foregoing discussion, in view of the fact that the SMS allegedly sent to the petitioner – addressee by the originator – second respondent, which was admittedly not received by the petitioner – addressee with error ext ‘VMSC: unexpected response received’ and ‘Absent subscriber’, we are not able to accept the contention raised by the respondents in the writ petition about service of SMS, for the simple reason that the SMS sent to the petitioner have not reached her mobile number. Therefore, unhesitatingly, we hold that the communication sent to the petitioner – addressee by the originator – second respondent for production of sub-caste certificate within the specified time is not sufficient communication. Accordingly, the point is answered.

P O I N T No.2:

As discussed above, no communication i.e. SMS was received by the petitioner for furnishing her sub-caste certificate within the stipulated time. Failure to submit the sub-caste certificate is not on account of the petitioner’s negligence or any other reasons attributable to her. We already held that communication sent to the petitioner – addressee by the originator – second respondent for production of sub-caste certificate within the specified time is not sufficient communication, while answering Point No.1.

Though the petitioner obtained sub-caste certificate from the competent authority in the year 2014 itself, failure to submit such certificate as required in the selection process by the appointing authorities is not a ground to reject the appointment of this petitioner as Secondary Grade Teacher (Telugu). The learned counsel for the petitioner,



in support of his contention placed reliance on the judgments of the Apex Court in **Charles. K. Skaria vs Dr.C.Mathew**³ and **Dolly Chhanda v. Chairman, JEE and others**⁴. In **Charles. K. Skaria vs Dr.C.Mathew** (referred supra), the controversy related to admission to a post graduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or sub-specialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The Prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to post graduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. The Apex Court reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of the judgment, where this principle was highlighted are being reproduced below:

"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

³ 1980 AIR 1230

⁴ (2005) 9 Supreme Court Cases 779



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 unshakeably 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 dehumanizes 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 over-emphasis 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.”

In ***Dolly Chhanda v. Chairman, JEE and others*** (referred supra), the Apex Court again relied on the principle laid down in ***Charles. K. Skaria vs Dr.C.Mathew*** (referred supra). In the facts of ***Dolly Chhanda v. Chairman, JEE and others*** (referred supra), the appellant qualified in Joint Entrance Examination, 2003, but having been denied admission



due to fault of authorities, who adopted a highly technical and rigid attitude towards the appellants. The Court was of the opinion that, failure of this petitioner to submit certificate which was already obtained by him is not a ground to reject admission into JEE examination and the order of the learned single Judge was set-aside by the Apex Court.

In the instant case, the petitioner had already obtained sub-caste certificate on 20.01.2014 from the Tahsildar, Zarugumilli Mandal. But, due to lack of information or non receipt of any SMS allegedly sent by the second respondent, she could not furnish the same to the second respondent or uploaded to the web portal of second respondent. Hence, the judgment in ***Dolly Chhanda v. Chairman, JEE and others*** (referred supra) is directly applicable to the present facts of the case, since no material is available on record regarding compliance of Section 12(3) of Information Technology Act, 2000, to presume or draw an inference that the communication i.e. SMS had reached the mobile number of this petitioner. Even according to the official respondents, the communication did not reach the mobile number of this petitioner, in view of error text messages.

The main endeavour of this petitioner in the Information Bulletin, it is specifically stated that, the communication will be sent through SMS to the candidate on providing mobile number to the recruiting authority i.e second respondent. On verification of entire Information Bulletin, there is nothing specifically directing the petitioner to furnish mobile number to communicate the information about process of recruitment. Clause No.20 (iv) of the Information Bulletin was relied on by the second respondent, since the petitioner failed to submit sub-caste certificate.



Undoubtedly, Clause No.20 (iv) is incorporated in the Information Bulletin. According to it, after preparation of provisional merit-cum-roster list, the candidates are required to furnish original qualification certificates and failure to furnish the same, disqualifies such candidate for selection. In the absence of any specific direction for providing mobile number for communication purpose, mere providing a column for furnishing mobile number in the application form without providing a column for sub-caste in the application, the contention of the second respondent is rejected, as the petitioner was not required to mention and submit sub-caste certificate in support of it. Even the application discloses the mobile number of this petitioner. But, it is silent that the communication will be sent only through the said mobile number.

A copy of the receipt dated 05.11.2018 submitted by the petitioner is evidencing payment of requisite examination fee is placed on record. Specific notes are mentioned under the receipt, which reads as follows:

- *Provide candidate valid mobile number with payment. Any future communication (Notification related message alerts, Otp) send to candidate Mobile Number only.*
- *Provide candidate valid Aadhar, Mobile, Community and PH details. No changes are entertained after payment.*
- *Candidate alone responsible if any wrong entries (Addhar, Mobile, Community...) are made by the candidate in the payment form.*

Taking advantage of this note under the Transaction Receipt dated 05.11.2018, which is not part of Information Bulletin or the application form, the second respondent contended that the communication will be sent only through cell phone about the process of recruitment. When it was not the condition either in the Information Bulletin or application form, it cannot be made as mandatory for communicating later. If that is



the strict rule, a person who is not holding cell phone is disqualified for appearing for the examination, though it is not a disqualification as per rules. Such condition in the receipt cannot be construed strictly, but on harmonious construction, such condition cannot be said to be mandatory. Therefore, sending messages by SMS to the cell phone number of the candidate cannot deprive a person who is not possessing mobile number of where the network is poor. On the basis of such condition, no candidate shall be deprived from selection to Secondary Grade Teacher. If the petitioner was selected, she would have been in appropriate place in the roster. But, for the mistake of Respondent Nos. 2, she cannot be deprived of the benefits of service, and atleast notional seniority shall be given from the date of her juniors were appointed. Hence, we direct the second respondent to appoint this petitioner at appropriate roster point as Secondary Grade Teacher (Telugu) giving benefit of notional seniority from the date when less meritorious candidates to the petitioner are appointed.

The petitioner is a woman belonging to Yanadi Community, mostly residing in a remote place in Tribal Areas and living below poverty line. Such persons are not expected to maintain network, accessing to the helpline provided by the official respondents to get updated about the process of recruitment. Therefore, it is difficult to attribute any knowledge to this petitioner about requirement to submit sub-caste certificate under Scheduled Tribe Quota to claim benefit of reservation under Yanadi Community under Scheduled Tribe quota. Hence, the finding recorded by the learned single Judge that the petitioner was negligent in submitting



sub-caste certificate to the second respondent is contrary to the law laid down by the Apex Court. Accordingly, the point is answered.

In the result, writ appeal is allowed, setting-aside the order of the learned single Judge in W.P.No.9827 of 2021 dated 06.10.2021; while directing Respondent Nos.1 to 5 to appoint this petitioner as Secondary Grade Teacher (Telugu) under Scheduled Tribe (Yanadi) Reservation Quota in Prakasam District, at appropriate roster point, giving benefit of notional seniority from the date when less meritorious candidates to the petitioner are appointed. In case, no vacancy is available in the cadre, respondents are directed to create one supernumerary post. However, the petitioner is not entitled to claim monetary benefit, as she was not appointed to the post on the principle of **NO WORK – NO PAY**. No costs.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

PRASHANT KUMAR MISHRA, CJ M. SATYANARAYANA MURTHY, J

SP