

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.09.2016

Delivered On : 29.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.28044 of 2016

and WMP.No.24197 of 2016

R.Ganesh Kumar

.. Petitioner

vs.

1.The Tamil Nadu Public Service Commission,
Represented by its Secretary,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-600 003.

2.The District Collector,
Tiruppur District,
Tiruppur.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records in Memo No.4702/OTD-B3/2013 dated 10.06.2016 on the file of the first respondent and quash the same and consequently direct the first respondent to issue appointment order to the petitioner to the post of Audit Inspector in the Audit Wing of Hindu Religious and Charitable Endowments Administration Department in terms of the selection made in Combined Civil Services Examination -II (Interview Posts) Group-II for the year 2013-14 on receipt of the NOC from the second respondent.

For Petitioner : Mr.E.Om Prakash
for M/s.Ramalingam and Associates

For Respondents : Mr.M.Loganathan for R1
Mr.S.Gunasekaran.
Additional Govt. Pleader for R2

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus calling for the records in Memo No.4702/OTD-B3/2013 dated 10.06.2016 on the file of the first respondent, quash the same and consequently direct the first respondent to issue appointment order to the petitioner to the post of Audit Inspector in the Audit Wing of Hindu Religious and Charitable Endowments Administration Department in terms of the

selection made in Combined Civil Services Examination -II (Interview Posts) Group-II for the year 2013-14 on receipt of the NOC from the second respondent.

2. The Petitioner is a B.A degree holder in English literature from Annamalai University and had also done D.T.Ed and B.Ed. The petitioner initially got employment in Bank of Baroda and worked in Chennai and thereafter attended Group-II examination conducted by the first respondent for the post of Revenue Assistant for the period 2009-2011 and was selected to the said post. The petitioner joined the service as Revenue Assistant at Madathakulam Taluk, Tiruppur District under the administration of the second respondent on 05.12.2012. While so, the first respondent had notified direct recruitment to the vacancies for the year 2013-2014 for various posts included in Combined Civil Services Examination-II (Interview Posts) Group II Services by Notification No.14/2013 dated 05.09.2013. Since the petitioner possess all the required qualifications, he made an on-line application in Application No.341057411 dated 09.09.2013 and was allotted online ID as 541222 and in the online application, the petitioner had disclosed that he was already working as Revenue Assistant based on the selection by the first respondent in terms of earlier notification with Reg.No.99936195 in the year 2012. On 01.12.2013, the petitioner appeared for the preliminary examination and the results of the same was published on 08.09.2014 and he was provisionally selected for the Main Written Examination in the ratio of 1:10 scheduled on 08.11.2014 and accordingly, he appeared for the Main Written Examination and the results of the same was published on 09.03.2015 and he was successful in the written examination and was selected for Oral Test (Interview). Hence the first respondent, vide Memo No.2389/OTD-B3/2015 dated 14.03.2015, called the petitioner for Certificate Verification on 08.05.2015 at 2.00 p.m. at the office of the first respondent.

3. The petitioner attended the Certificate Verification with the first respondent and produced all the certificates and during the Certificate Verification, the petitioner was directed to fill up a questionnaire which had a clause whether any disciplinary proceedings pending against him, for which he responded as "Not Pending"and also made a note that the disciplinary proceedings initiated had ended with a minor punishment. The petitioner had also made a request to grant time to pursue with his Department and produce No Objection Certificate (NOC) from his department, which he had not produced during the Certificate Verification. In the response to the same, the petitioner had attended the oral test and interview on 17.07.2015 and also informed that NOC is yet to be issued and that he would pursue the same and produce at the earliest.

4. The petitioner made a request to the District Revenue Officer for NOC by a letter dated 09.07.2015 and followed up on daily basis with his Department Head and the District Revenue Officer literally begging them to consider issuance of NOC to enable him to seek for the appointment from the first respondent. But the second

respondent, vide communication in Ref.No.4445/2015/A3 dated 15.07.2015 signed by the District Revenue Officer referred to the petitioner's request for NOC and reported about the conclusion of the disciplinary proceedings with imposition of minor penalty, pursuant to the disciplinary proceedings against him. The said communication did not choose to say anything on the issuance of NOC and placed the said information for consideration of the first respondent. The Department sought to work against the petitioner interest and he was put to tremendous mental agony and untold hardships. In the meantime, the first respondent sent a communication for counseling on 24.08.2015 at 8.30 a.m. pursuant to the earlier certificate verification and interview was conducted in the office of the first respondent. The petitioner was also provisionally selected to the post of Audit Inspector in the Audit Wing of Hindu Religious and Chairtable Endowments Administration Department, Tamil Nadu Ministerial Subordinate Service included in Combined Civil Services Examination-II (Interview Posts) (Group II Services) for the year 2013-2014. The petitioner also made a request to the first respondent on 04.11.2015 seeking further time to produce the NOC and the said letter was also received by the first respondent.

5. In this situation, the first respondent vide Memo No.4702/OTD-B3/2013 dated 16.03.2016 issued a Show Cause Notice to the petitioner, calling upon him to explain as to why his application should not be rejected, why provisional selection to the post should not be cancelled and why he should not be debarred from appearing in any examinations in future on the alleged ground of suppression of material fact that the disciplinary proceedings had been initiated and punishment awarded during the certificate verification/oral test counseling. The petitioner has also submitted a detailed explanation dated 29.03.2016 to the show cause notice and without considering all the relevant facts in proper perspective, the impugned order dated 10.06.2016 in Memo No.4702/OTD-B3/2013 was passed by the first respondent rejecting his application and cancelled the provisional selection to the post and debarred him from appearing in any examinations in future for a period of one year on the alleged ground of suppression of material fact. Challenging the same, the present writ petition is filed.

6. When the matter is taken into consideration, Mr.E.O.Prakash, learned counsel appearing for the petitioner reiterated the averments made in the affidavit and submitted that on the date of submitting application, namely 09.09.2013 as well as on the date of attending preliminary examination, namely 01.12.2013, there is no charge memo as against the petitioner and further the charges are not serious in nature. Infact the petitioner has requested the department to grant leave till 31.07.2014, since his mother fell ill, but he was permitted to go on leave after completing certain files relating to public distribution of Kerosene and issuance of orders for the Taluk distribution and thereafter, the petitioner went on leave from 05.07.2014 till 31.07.2014 and subsequently, the petitioner brother's marriage was arranged urgently and his mother continued to be ill and therefore, he extended the

till from 01.08.2014 till 30.08.2014 on Loss of Pay. But the Department had initiated disciplinary proceedings against the petitioner. Since at the time of filing the application as well as during preliminary examination, there was no charge memo issued against the petitioner, there is no occasion to mention the same. Furthermore, the Department has also purposefully avoided to issue No Objection Certificate and the non-mentioning of the charge memo is not a deliberate one. Thus, the learned counsel appearing for the petitioner sought for quashment of the impugned order.

7. Per contra, Mr.M.Loganathan, learned Standing Counsel appearing for TNPSC/first respondent has invited the attention of this Court to the counter affidavit and would submit that the Commission in its notification No.14/2013 dated 05.09.2013 had invited applications to fill up 1130 vacancies by direct recruitment to the posts included in Combined Civil Services Examination. The petitioner has also applied through online on 09.09.2013 and mentioned as "No" against the Column Departmental Disciplinary Action (Initiated/Pending/Punishment Awarded) and during Certificate Verification on 08.05.2015, the petitioner did not submit NOC from the employer but he had declared that no disciplinary case is pending against the petitioner in the format of letter submitted by him and the petitioner stroked out the portion relating to initiation of disciplinary action and punishment awarded and the petitioner has also assured to produce NOC at the time of Oral Test. Disciplinary action was initiated against the petitioner by issuing Charge Memo dated 16.08.2014, whereas the petitioner had attended Certificate Verification on 08.05.2015 and therefore, on the date of Certificate Verification, he knew pretty well that disciplinary proceeding is pending him and inspite of that, he has chosen to give a false information and suppressed the same in the relevant column of the application. Therefore, there is a clear suppression of material information regarding the punishment awarded when he attended Certificate Verification. That apart, the petitioner has not produced NOC from the department till date and that is the reason why the impugned order has been passed and therefore, prays for dismissal of this writ petition.

8. Keeping the submission made on either side, I have gone through the entire materials placed before it.

9. The petitioner herein was already working as Revenue Assistant pursuant to his earlier selection and when the first respondent notified for direct recruitment to the vacancies for the year 2013-2014 for various posts included in Combined Civil Services Examination-II (Interview Posts) Group II Services, by Notification No.14/2013 dated 05.09.2013, he had applied for the same as he has fulfilled the eligible qualifications and since the petitioner has already served as Revenue Assistant, he has to produce No Objection Certificate from the concerned Department, but he has not produced the same. Furthermore, while he was working as Revenue Assistant, he has suffered punishment pursuant to disciplinary proceedings initiated by the first respondent. But he has suppressed the same at

the time of filing up the relevant column in the online application. As rightly contended by the learned counsel appearing for the petitioner, at the time of certificate verification, he knew pretty well that disciplinary proceedings is pending against him and inspite of it he had declared that no disciplinary case is pending against him in the format of letter submitted by him by stroking out the portion relating to initiation of disciplinary action and punishment awarded. Therefore, it is crystal clear there is a suppression of material fact and as per Rule 12(b) of Tamil Nadu State and Subordinate Service Rules "No Person shall be eligible for appointment to any service by direct recruitment unless he/she satisfies the Commission in cases where appointment has to be made in consultation with it or the appointing authority in other cases that his character and antecedents are such as qualify him for service. Therefore, appointment is purely based on the satisfaction of the Commission in consultation with the appointing authority. Since the petitioner has suppressed the material fact, the first respondent has issued the impugned order and moreover, he has not produced NOC from the department, which is one of the requirement for appointment.

10. In view of the reasons assigned above, I am of the opinion that the impugned order passed by the first respondent does not suffer from any legal infirmity. Therefore, I do not find any merit in this Writ Petition.

11. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

jvm

To

1.The Secretary,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-600 003.

2.The District Collector,
Tiruppur District,
Tiruppur.

+1 CC to Mrs.Ramalingam Associates SR.No.56014

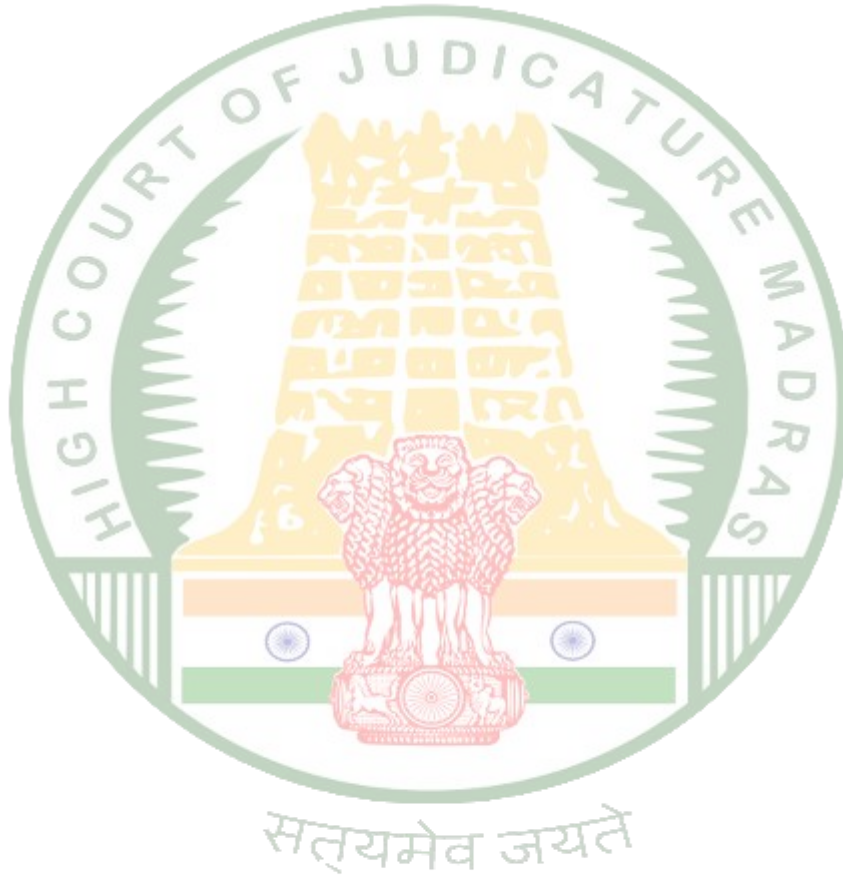
+1 CC to Mr.M.Loganathan Advocate SR.No.56335

+1 CC to The Government Pleader SR.No.56479

CO-LRS

ths : 04.11.2016

Order
in W.P.No.28044 of 2016



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