

In the High Court of Judicature at Madras

Dated : 20.3.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice S.M.SUBRAMANIAM

Writ Petition No.6529 of 2017 & and WMP.No.7034 of 2017

K.Chandrasekaran

...Petitioner

Vs

1.Government of Tamil Nadu, Home
(Courts-I) Department, Secretariat,
Chennai-9.

2.The Registrar General, High Court of
Judicature at Madras, Madras.

3.Tamil Nadu Public Service Commission,
Frager Bridge Road,
rep.by Joint Secretary, Park Town,
Chennai-3.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in Memo No.5148/otd-c4-2013 dated 06.10.2016 on the file of the third respondent, quash the same as being arbitrary, ultra vires, ex facie illegal and against the principles of natural justice and consequently direct the first respondent to issue order of appointment to the petitioner.

For Petitioner

:

Mr.V.Balamurugane

ORDER OF THE COURT WAS MADE BY NOOTY.RAMAMOHANA RAO,J

The writ petitioner seeks a Writ of Certiorarified Mandamus for declaring the memo dated 06.10.2016 issued by the Tamil Nadu Public Service Commission rejecting the candidature of the writ petitioner for appointment to the post of Civil Judge (Junior Division) and also cancelling his provisional selection, as such, in view of the facts emerging relating to his involvement

in a criminal case before the commencement of the recruitment process itself.

2. Heard Mr.V.Balamurugane, learned counsel for the petitioner in extenso.

3. It is not in dispute that the writ petitioner has responded to Notification No.15/2014 dated 26.8.2014, issued by the Tamil Nadu Public Service Commission inviting applications through on-line mode latest by 21.9.2014 for direct recruitment to the post of Civil Judge (Junior Division). He appeared for the written test and being a short-listed candidate, he was also subjected to the oral interview test and he was declared to have been provisionally selected on 15.6.2015, as he has secured total marks of 282. However, when the antecedents have been verified, it has emerged that there was a criminal case booked by the Malliakarai Police Station on 13.3.2011 for the alleged offences said to have been committed under Sections 147, 341, 420 and 506(ii) of the India Penal Code. But, however, the said information relating to the involvement of the writ petitioner in the said criminal case has not been disclosed, while submitting the Application Form.

4. The explanation offered by the writ petitioner, as was vouchsafed by the learned counsel, was that the petitioner was not in the know of booking such a criminal case, in as much as the police have never called him for investigation and the said criminal case has, in fact, been closed by the learned Judicial Magistrate II, Athur, as the police have submitted final report No.35/2011 disclosing it as a 'mistake of fact'. Therefore, the writ petitioner, for want of knowledge about his involvement in the criminal case, has not disclosed the necessary information in the application form submitted him.

5. This explanation offered by the petitioner does not fit into the facts as narrated in paragraph 6 of the affidavit filed in support of this writ petition, which reads as under :

"I humbly submit that Senthilkumar approached me in the year 2012 for filing a suit against his mother-in-law Chinnammal, the defendant in that suit. The said Chinnammal has lodged a complaint against Senthilkumar, in which, she has also implicated me as an accused. After thorough verification, it was learnt that the said complaint was lodged by the said Chinnammal before the Malliakarai Police Station on 13.3.2011 under Sections 147, 341, 420 and 506 (ii) of IPC. I was not at all called by the police. However, Senthilkumar informed

me that the case was closed as mistake of fact on 31.12.2012 vide final report No.35/2011 by the Judicial Magistrate II, Athur. I am totally ignorant of the said FIR. Neither was I called by the police or in the magistrate court in connection with this case. After verification of my documents so as to ascertain the factual position, I personally enquired and found all these facts and immediately thereafter on 20.4.2015 before the interview by the Board, I brought all these to the knowledge of the third respondent by way of a letter enclosing the copy of the FIR and the closure report."

6. From the above narration of facts, it has clearly emerged that the writ petitioner has submitted a representation on 20.4.2015 before facing the interview disclosing his involvement in the criminal case. Thus, obviously, the writ petitioner has made an attempt to take advantage of the view expressed by the Supreme Court in the case of Commissioner of Police Vs. Dhaval Singh [reported in 1999 (1) SCC 246], in which case, a candidate, who faced selection for appointment as police constable in Delhi Police Establishment, has, on his own, disclosed the relevant information about his involvement in a criminal case much prior to the selection getting finalised and therefore, in that context, the Supreme Court has arrived at the conclusion that the conduct of the party does not amount to wilful suppression of facts.

7. In contrast to the aforementioned facts lying before the Court in the above said case, in the instant case, the writ petitioner has disclosed in paragraph 6 of the affidavit, which we have extracted above, that Mr.Senthilkumar informed him that the case itself was closed as a mistake of fact on 31.12.2012. Therefore, it is reasonable for one to infer that the writ petitioner is aware and in the know of the fact of his involvement in a criminal case much prior to 26.8.2014 - the date, on which, Notification No. 15/2014 has been published by the Tamil Nadu Public Service Commission. It is a fact that he has submitted his representation prior to facing the interview on 20.4.2015, a copy of which was not even made available for us to look into it nor was a copy of the order passed by the Criminal Court on 31.12.2012 nor a copy of final report No.35/2011 said to have been filed by the police or even a copy of the first information report have been made available to us. They do not form part of the Record.

8. We are also not willing to swallow the statement made by the writ petitioner that he has not been called by the police as

part of investigation for the reason that the offences alleged against the culprits are under Sections 147, 341 and 420 of the Indian Penal Code, which are cognizable offences. The other offence under Section 506(ii) of the Indian Penal Code is the only one which is a non cognizable offence. When once information about a cognizable offence has been reported to the police, there is no choice except to register the gist of the said complaint in a register specifically maintained for that purpose and it is known as first information report (FIR) as per Section 154 of the Criminal Procedure Code.

9. Once a first information report is recorded and investigation is taken up into a cognizable offence, all relevant material including the examination of the accused persons will have to be entered in a diary to be maintained specifically for that purpose in terms and in accordance with Section 172 of the Criminal Procedure Code. Therefore, it will be very hard for us to believe that even without inquiring from the writ petitioner as to what really happened, the police would have filed a report in a cognizable offence involving rioting and cheating to be a mistake of fact.

10. It is obvious to us that the writ petitioner is not making a clean breast of himself even at this stage. He is only trying to take advantage of an order, which we have passed in detail on 08.3.2017 in W.P.Nos.37769 of 2016 etc cases, which we have heard over a considerable period of time prior thereto. Though this writ petition is filed in the High Court on 22.1.2017 and has been represented after rectifying the defects pointed by the Registry on 24.2.2017, no efforts have been made to get the matter listed for hearing along with the other batch of cases, because we have been perusing the entire records made available by the respondents during the course of hearing of those cases. The writ petitioner, being a practising lawyer, it appears, wanted to ensure that we should not look into the records completely in his case. That is the reason why for the first time this matter came up to be listed for hearing on 17.3.2017 and at request, it was adjourned for further hearing to today.

11. Even in our judgment rendered on 08.3.2017, we have brought home in unmistakable terms that the character, the conduct and the ethical base of candidate, who wishes to get recruited as a Judicial Officer, must be far superior to that of a candidate seeking appointment against any other ordinary civil service. In view of suppression of information even in the affidavit filed in support of this writ petition by a practising lawyer, who should be much more than anyone else be conversant with the principle, that suppression of vital information would be a fatal exercise in a Court. Therefore, we do not wish to

follow the earlier judgment, which we have rendered on 08.3.2017 and dismiss this writ petition at the admission stage, as the conduct of the writ petitioner does not deserve any condonation, unlike in the other cases where the relevant information has been set out in the affidavits filed in support of the writ petitions and then arguments were advanced. Consequently, the above WMP is also dismissed. No costs.

sd/
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

- 1.The Government of Tamil Nadu, Home (Courts-I) Department, Secretariat, Chennai-9.
- 2.The Registrar General, High Court of Judicature at Madras, Madras.
- 3.The Joint Secretary, Tamil Nadu Public Service Commission, Frazer Bridge Road, Park Town, Chennai-3.

+1cc to Government Pleader SR.No.17344
+1cc to Mr.V.Balamurugane, Advocate SR.No.17152

WP.No.6529 of 2017&
WMP.No.7034 of 2017

SVI (CO)
GN (28/03/2017)

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