



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
18.04.2017	25.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P. (MD) No.22089 of 2016
and
W.M.P. (MD) Nos.15809 & 15810 of 2016

M.Sudha Parameswari

... Petitioner

-vs-

1. The Joint Secretary,
Tamil Nadu Public Service Commission,
Frazar Bridge Road,
VOC Nagar, Park Town,
Chennai-600 006

2. The Principal District Judge,
Thoothukudi,
Thoothukudi District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in memorandum No.7063/PSD-B3/2014, dated 05.08.2016, on the file of the Respondent No.1 and quash the same as illegal and consequently to direct the Respondent No.1 to consider the petitioner for appointment to the post of Typist included in Group-IV Services for the years 2013-14 and 2014-15 or in the alternative allow the petitioner to rejoin duty as Typist Grade III at the District Munsif Court, Tiruchendur, Thoothukudi District, within a stipulated time.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.D.Sivaraman for R1
Mr.N.Tamilmani
Standing Counsel for R2

**O R D E R****T.S.SIVAGNANAM, J.,**

WEB COPY The petitioner has filed this writ petition challenging the order passed by the first respondent / Tamil Nadu Public Service Commission (TNPSC), dated 05.08.2016, in and by which, she was informed that TNPSC has decided to reject her application for direct recruitment to the posts included in Group-IIA Services for the year 2013-14 and to debar her for a period of one year with effect from 25.07.2016 from appearing any of the Examinations / Selections to be conducted by the Commission in future for having suppressed the material information.

2. The facts leading to the filing of the writ petition are as follows:

2.1. The petitioner participated in the selection for Group-IV Services for the year 2013-2014 and was selected to the post of Steno-Typist Grade-III and allotted to the Judicial Department and she joined duty in the Fast Track Mahila Court, Thoothukudi, on 17.10.2014. She was later transferred and posted to the District Munsif Court, Tiruchendur. Prior to being selected as Steno-Typist, the petitioner had applied for selection to Group-IIA Services for the year 2013-14. Based on her application, TNPSC called upon the petitioner for certificate verification on 18.08.2015 and counselling on 13.10.2015. However, she did not reach the zone of selection due to non-availability of vacancy in the said recruitment. The petitioner also applied for recruitments to Group-IIA for the year 2014-15 and 2015-16, Examination conducted on 18.10.2015 and the Examination for the post of Village Administrative Officer on 23.11.2015. Though at the relevant time, the petitioner was in Government service, she failed to disclose the same in her applications, dated 18.10.2015 and 23.11.2015, which were submitted online. The Tamil Nadu Public Service Commission came to know about the details of the petitioner's employment as Steno Typist Grade-III only after a communication was sent by the District Munsif, Tiruchendur, through the Principal District Judge, Thoothukudi, vide letter, dated 28.04.2016.

2.2. In terms of the rules of TNPSC, if a candidate is in Government service, the same has to be disclosed and a No Objection Certificate is required to be produced from the employer. The petitioner failed to comply with the said rule in both the recruitments.



Owing to this, a show-cause notice, dated 01.06.2016, was issued to the petitioner calling upon her to explain as to why she should not be debarred from appearing for examinations and selections held by the Commission and why her application to the post of Group-IIA for the year 2013-14 recruitment should not be cancelled.

2.3. In the said show-cause notice, a reference was made to the instructions issued by the TNPSC and that the petitioner failed to inform about her present employment details i.e., she is working as Steno-Typist Grade-III in the Principal District Court, Thoothukudi Unit, during the certificate verification held for the post of Group-IIA for the year 2013-14 recruitment and she has suppressed the fact to the Commission. A further reference was made to the instructions given under Para 15(g) Note (i) and Para 19(b)(ii)(a) of TNPSC Instructions to the candidates and she was informed that candidate, who suppress the material information regarding previous employment in Government (or) Local Bodies is liable for disbarment permanently (or) for such period of years as the Commission decides.

2.4. The petitioner, by her explanation, dated 20.06.2016, stated that she had applied for Group-IIA posts for the year 2013-14 even before she was selected to the post of Steno-Typist, a Group-IV post and therefore, she had stated that she is not employed. Further, she had stated that before attending the certificate verification for selection to Group-IIA services, she had obtained permission of the Judge, under whom she was working and she was contemplating of resigning from the post of Steno-Typist, if she is selected for Group-IIA post. Further, she had stated that she was unsuccessful in the selection to Group-IIA services and she has resigned from the post of Steno-Typist on 05.04.2016 and as on date, she is not employed elsewhere and requested to drop the proceedings and offer her any other suitable employment. TNPSC did not agree with the explanation given by the petitioner and consequently by the impugned order, her application for recruitment to the posts in Group-IIA was cancelled and she was debarred from appearing for examination / selection to be conducted by the Commission for a period of one year with effect from 25.07.2016.

3. The learned counsel appearing for the petitioner contended that the second respondent should have considered the petitioner's case sympathetically for posting the petitioner back in service in view of her unique nature of loss of employment with the first



respondent and now, she has been put to great suffering as she had lost her previous employment and debarred from participating for the subsequent selection.

4. Further, the learned counsel for the petitioner submitted that after the petitioner had resigned the post, she has applied for selection to the posts included in Group-IV for the year 2015-2016 and she has been now called for certificate verification and on account of the impugned order, she is unable to attend the selection and therefore, the petitioner should be permitted to attend such selection.

5. The learned counsel appearing for the first respondent / TNPSC referred to the relevant instructions issued by TNPSC and submitted that suppression of material information regarding previous appearances or availing free chances, employment in Government or Local Bodies, Public Corporations etc., will be viewed seriously and that the candidate responsible for such act will be debarred from appearing for the examinations and selections held by the Commission permanently or for such period of years as the Commission may decide.

6. It is further submitted that though the petitioner stated that she has resigned her job on 05.04.2016, she did not inform about her resignation when she called for certificate verification on 28.04.2016 for recruitment to the post of Steno-Typist Grade-III included in Group-IV Services for the year 2013-14 and 2014-15 and that her resignation was accepted by the second respondent and relieved from the post only on 07.06.2016. Therefore, it is submitted that on account of the wilful suppression made by the petitioner, the Commission has passed the impugned order, which is just and proper.

7. The learned Standing Counsel appearing for the second respondent, referring to the counter affidavit filed, submitted that the petitioner joined duty on 17.10.2014, at Mahila Court, Thoothukudi and on 05.03.2015, she was transferred on the complaint made by the Sessions Judge about her poor performance. It is further submitted that though the petitioner might have applied for Group-IV Examination before joining as Grade-III Steno-Typist on 07.10.2014, but after joining the Judicial Department, she petitioner ought to have obtained permission from the appointing authority for appearing for certificate verification on 18.08.2015 and Counselling on 13.10.2015 for Group-IIA Services for the year 2013-2014. However, the petitioner failed to obtain permission and it was intimated by the District Munsif, Tiruchendur, by letter, dated 23.02.2016, to the Secretary, Tamil Nadu Public Service Commission, through the second respondent stating that the petitioner had attended certificate verification by applying for casual leave for four



days from 18.08.2015 to 21.08.2015 stating that she has to attend personal affairs. Further, to attend counselling on 12.10.2015, she availed leave on loss of pay from 12.10.2015 to 14.10.2015.

8. It is further submitted that the petitioner should be genuine and ought to have disclosed her employment in the Judicial Department. Further, it is submitted that after receipt of allotment from TNPSC, if the candidate resigned the job within short duration, the concerned Department has to wait for the next recruitment for filling up that vacant post which was intimated by TNPSC vide letter, dated 29.08.2016. The resignation of the petitioner, without any valid purpose and suppressing the material fact of joining in the Judicial Department, has caused much inconvenience to the smooth functioning of the Court, where she was posted. On the above grounds, the second respondent seeks to sustain the impugned order.

9. A rejoinder affidavit has been filed by the petitioner to the counter affidavit by the respondents 1 and 2 setting out the dates on which, she had applied for Group-IV services and Group-IIA services and justifying her stand and parallely stating that she is prepared to work in any post in Tirunelveli District and stating about her family circumstances and prayed for setting aside the impugned order.

10. We have heard the learned counsel for the parties and carefully perused the materials placed on record.

11. The fact that the petitioner participated in the counselling and certificate verification for selection to a post notified by TNPSC, while she was in employment under the second respondent, without obtaining prior permission or no objection is not in dispute. The only reason the petitioner assigns is that she had applied for the post much prior to she being selected and appointed as Steno-Typist Grade-III. Though it may be true that the application was submitted by her before she was appointed as Steno-Typist, on the date of certificate verification and counselling, she was a full-time Government servant employed under the second respondent. Therefore, the petitioner was required to obtain no objection certificate from her employer / second respondent and disclose to the Commission that she is in Government service. The petitioner failed to comply with both these primary requirements. At this juncture, it would be relevant to take note of the rules, which have been framed by TNPSC and the instructions to the candidates, which are as follows:

"The Tamil Nadu Government Servants' Application for posts Rules 1973 states as follows:

https://hcservices.ecourts.gov.in/hcservices/.2. An application for appointment to a service under the administrative control of



the State Government or to any post therein shall not be eligible for appointment if he is in Government service and has applied without the consent of the Head of the Office or Department of the State Government or the consent of the State Government or of the Government of India, as the case may be, under whom he is employed."

Explanation : xxxxx

3(1).xxxx

"Provided that in the case of an application for a post called for by the Tamil Nadu Public Service Commission, the Government servant shall apply directly including through "On line" in the Optical Mark Reader (OMR) application form to the Tamil Nadu Public Service Commission, duly informing the fact to his appointing authority in writing subject to the condition that he should produce "No Objection Certificate" in this form annexed to these rules, from the appointing authority.

- i. at the time of oral test in respect of posts for which the selection comprises written examination and oral test; or
- ii. at the time of sending the original certificate for verification, in respect of posts for which the selection comprises only written examination;

"(2) In the case of a Government servant against whom departmental or criminal proceedings are contemplated or pending authority shall inform the said fact to the Tamil Nadu Public Service Commission along with the "No Objection Certificate" and shall also inform the Tamil Nadu Public Service Commission about the initiation of departmental or criminal proceedings, if any, subsequently, till the date of his actual relief from the Officer to take up appointment in the post for which he has been selected."

Para 15(g) Note (I) of the instructions to the candidates reads as follows:

- (i) Persons who get employment after the submission of their applications and before the receipt of intimation admitting them to the Oral Test / requiring to produce original documents for verification should also produce the "No Objection Certificate".



In terms of Para 19(b)(ii)(a) of the instructions, TNPSC is empowered to debar a candidate, who has suppressed information permanently. However, in the instant case, it appears that TNPSC has taken a lenient view and debarred the petitioner only for one year. Therefore, we are of the considered view that the punishment imposed is not disproportionate for the suppression made by the petitioner.

15. Furthermore, the entire episode would not have come to light, but for the letter addressed by the District Munsif, Tiruchendur, to TNPSC through the second respondent. Thus, the petitioner has failed to maintain decorum and has not acted in an honest manner and therefore, the decision of TNPSC rejecting her application for direct recruitment to the posts included in Group IIA Services 2013-14 and debarring her for one year with effect from 25.07.2016 is neither unjust or unreasonable.

16. Thus, for all the above reasons, we see no ground to interfere with the order passed by the first respondent.

17. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Joint Secretary,
Tamil Nadu Public Service Commission,
Frazar Bridge Road,
VOC Nagar, Park Town,
Chennai-600 006

2. The Principal District Judge,
Thoothukudi, Thoothukudi District.

+ 1 CC TO Mr.T.LAJAPATHI ROY, ADVOCATE IN SR No. 54152
+ 1 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 53842

KRK

TE/SV : 04/05/2017 : 8P/5C

ORDER IN

W.P.(MD) No.22089 of 2016 and

W.M.P.(MD) Nos.15809 & 15810 of 2016
25.04.2017