

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.9297 of 2010

and

M.P.No.1 of 2010

N.A.Mohan

...Petitioner

Vs

1.Government of Tamilnadu

Represented by
The Secretary to Government,
School Education Department,
Chennai - 600 009.

2.Director of Government

Examinations,
College Road,
Chennai - 600 006.

3.Tamilnadu Information Commission,

Rep. by its Registrar,
Co-operative Super Market Building,
1st Floor, Teynampet, Old No.273, New No.378,
Anna Salai, Chennai - 600 018.

..Respondents

(R3 - Impleaded as per order dated 24.07.2018

By RMDJ in W.M.P.No.34307/16 in W.P.No.9797/10)

WEB COPY

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorari calling for the records culminating in the impugned letter dated 04/01/2010 in case no.19470/FA/09 passed by the State Information Commission and quash the same.

For Petitioner : Ms.Diviya

For Respondents : Mr.V.Annadaksh,
Government Advocate for R1 & R2

Mr.Niranjan Rajagopalan for
M/s.G.R.Associates for R3.

ORDER

This Writ Petition is filed praying for a Certiorari to call for the records culminating in the impugned letter, dated 04/01/2010, in case no.19470/FA/09 passed by the State Information Commission and to quash the same.

2.The case of the petitioner is that he is holding a postgraduate degree in Public Administration and a degree in law. He joined the State Government Service in 1971 and retired in 2007 as Regional Deputy Director of Government Examinations in Madurai. While he was in service, there was an inordinate delay in preparing the panel of qualified persons fit for promotion as Regional Deputy Director of Government Examinations, due to which, the promotion was not granted in time to the qualified persons.

3.Hence, the petitioner sent a representation dated 05/06/2006 to the first respondent, through proper channel, pointing out that the crucial date for preparing panel of persons fit for promotion as Regional Deputy Director of Government Examinations was 01.09.2005, but, the same was approved only on 24.11.2005 and subsequently, the orders of promotion was issued only on

31.03.2006. As the petitioner retired on 31.03,2007, he had requested that the monetary loss caused due to the delay be made up by giving him notional fixation from 01.12.2005 ie., from the date on which the petitioner should have been promoted.

4.The further case of the petitioner is that the second respondent vide letter dated 05.05.2009, informed the petitioner that his representation dated 05.06.2006 was not recieved. Thereafter, by letter dated 14.05.2009, the petitioner filed a petition under the Right to Information Act, to permit him to peruse and take copies of letters and registers maintained in this connection by the second respondent. The second respondent vide letter dated 02.06.2009, informed the petitioner that all the documents which the petitioner seeks for are under the custody of the Madurai Regional Deputy Director and they further, permitted him to inspect the same and take copies of the same at Madurai. The petitioner by letter dated 26.06.2009, requested to inspect the said documents in Chennai, but, the same was not considered by the second respondent.

5.Hence, the petitioner had filed a complaint before the State Information Commission, which was numbered as case no.19470 of 2009. Thereafter, summons were issued by the State Information Commission, to the petitioner and the second respondent asking them to appear for an enquiry to be held on 13.11.2009, at 2.00 p.m. Since the petitioner had a family function on 13.11.2009, he could not

appear for the same. Though vide letter dated 11.11.2009, the petitioner had requested the State Information Commissioner to fix the date of hearing on some other date, since he would not be able to attend the same on 13.11.2009, the said request was not considered by the State Information Commission. Further, on 17.11.2009, the complaint lodged by the petitioner was disposed of without giving an opportunity to the petitioner with a direction that the petitioner shall be permitted to visit the Regional Deputy Director's Office at Madurai for perusing and taking photo copies of the documents, which he had sought for.

6. By letter dated 11.12.2009, the petitioner requested the State Information Commission to order a review or re-enquiry in the matter as the order was passed ex-parte and did not disclose the grounds and the provisions of the Act by which his prayer was rejected.

7. The petitioner's contention is that vide impugned communication dated 04.01.2010, in Case No.19470/FA/09, the State Information Commission has stated that the petitioner has the right to inspect the records only "in situ" and that he has committed gross contempt by accusing the Judge of bias. Further, the petitioner being in contempt, unless purged of the contempt, no petition of the petitioner will be entertained by the State Information Commission. However, the petitioner would contend that no one can be punished for contempt unless the power is specifically conferred on the Authority by the Act. The impugned order

has been passed without proving an opportunity to the petitioner and as such it is against the principles of natural justice. Since the complaint is filed by a bonafide person who has put in 36 years of unblemished service in the State Government, the impugned order is without power and authority and is liable to be quashed.

8. On perusal of the documents filed by the petitioner, it is seen that the petitioner has sent a representation, dated 05.06.2006, to the Secretary to Government, School Education Department, Fort St. George, Chennai - 600 009, stating that there was an inordinate delay at every stage of preparing the panel of qualified persons fit for promotion as Regional Deputy Director of Government Examinations, due to which there was a financial loss to the petitioner and therefore, to treat his promotion due as on 01.12.2005, the date on which he should have been promoted, giving the benefit of fixation notionally.

9. From the averment it is seen that vide letter dated 05.05.2009, the second respondent has replied that the petitioner has not paid the necessary charges under the Right to Information Act and that his letter dated 05.06.2006 was not at all received by them. On 14.05.2009, the petitioner has sought for perusing the documents regarding the selection panel for promotion from the second respondent. The same was considered by the second respondent and the petitioner was allowed to peruse the materials after getting permission from the

Madurai Regional Deputy Director and to pay necessary charges to get the photo copies of the same. Once again vide representation dated 26.06.2009, the petitioner has sought for permission from the second respondent to inspect the documents in Chennai. But, the same was not considered. The petitioner's contention that when he has sought for adjournment of the same stating that he has some personal function at Chennai was not considered. The petitioner has been given an opportunity by the Public Authority to peruse the documents which he has not utilised so far and further, there is nothing in the RTI Act that makes it necessary to collect and produce the documents for inspection by the petitioner wherever it is convenient to him. The petitioner has the right to inspect the records only "in situ" and this has been afforded by the said Commission. Hence, there is no failure of justice in this case nor any mistake of fact is found. The petitioner has committed gross contempt on the Court by accusing the Judge of bias which is even factually wrong. Further, the decision of the Single Commissioner contradicting the verdict pronounced by the collegium of Commissioners in case No.83/Enquiry/2008, wherein, the Chief Election Commissioner was also present and further the petitioner and the respondent belong to the same education department and his allegation that the Commissioner then was previously an influential official (Non-IAS) in the Education Ministry who should not have enquired this case. Had he known of it earlier, he would have objected to to the same. Therefore, he sought for review or re-enquiry of the case. It is seen from the order of the Tamil Nadu Information

Commission that the petitioner's appeal was heard on 13.11.2009 and that he had not appeared for the same and earlier on 10.08.2009, the petitioner was permitted to peruse the documents and on 07.09.2009, the petitioner has given a letter stating that he already perused the said documents. The same was shown to the petitioner at an earlier point of time. The petitioner could not peruse the documents on the hearing date and hence, the documents were taken from Madurai Office and further directed to be shown to the petitioner but, he failed to do so, even after also if the petitioner is willing to peruse the same in Madurai office, he has every right to peruse the same in Madurai itself by requesting to the same. But, the petitioner has not taken any steps to visit the Madurai Office to peruse the documents and take copies of the same. Hence, the Joint Registrar has passed an order informing the petitioner that if he is willing to peruse the same, he can do so and the same should be allowed by the second respondent. Against which order, the petitioner has filed a petition for reopening or re-viewing the case before the Chief Information Commissioner/State Information Commissioner, Chennai, who has also rejected the same. Since, there is no failure on the part of the respondents in not allowing the petitioner to peruse the said documents, wherever it is convenient to him, the request of the petitioner that all the documents should be brought and issued to him in Chennai for his perusal is not acceptable by the second respondent. There is no perversity alleged against the said order. The petitioner's grievance is that his request dated 26.06.2009 to inspect the documents in Chennai was not considered by the first respondent, also

is not accepted by this Court since it was already informed to him by the Appellate Authority/The Office of the Director of Government Examinations in the letter dated 22.07.2009 to peruse the documents in Madurai, after getting necessary permission from the Deputy Director concerned, which would also show that the petitioner's claim has been accepted and they have provided him an opportunity for perusing the same at Madurai region. The contention that an ex parte order has been passed is not acceptable since the petitioner was not inclined to peruse the same in Madurai stating some flimsy reasons. When an opportunity was given to the petitioner, which was not utilised by him, the petitioner's challenge is not acceptable and has to be rejected. The second respondent's order is valid and in the result, the writ petition is dismissed as devoid of merits. No costs. Consequently, the connected Miscellaneous Petition is closed.

25.03.2019

Index: Yes/ No
Internet: Yes/No
Speaking/non-speaking
tsg

WEB COPY

To

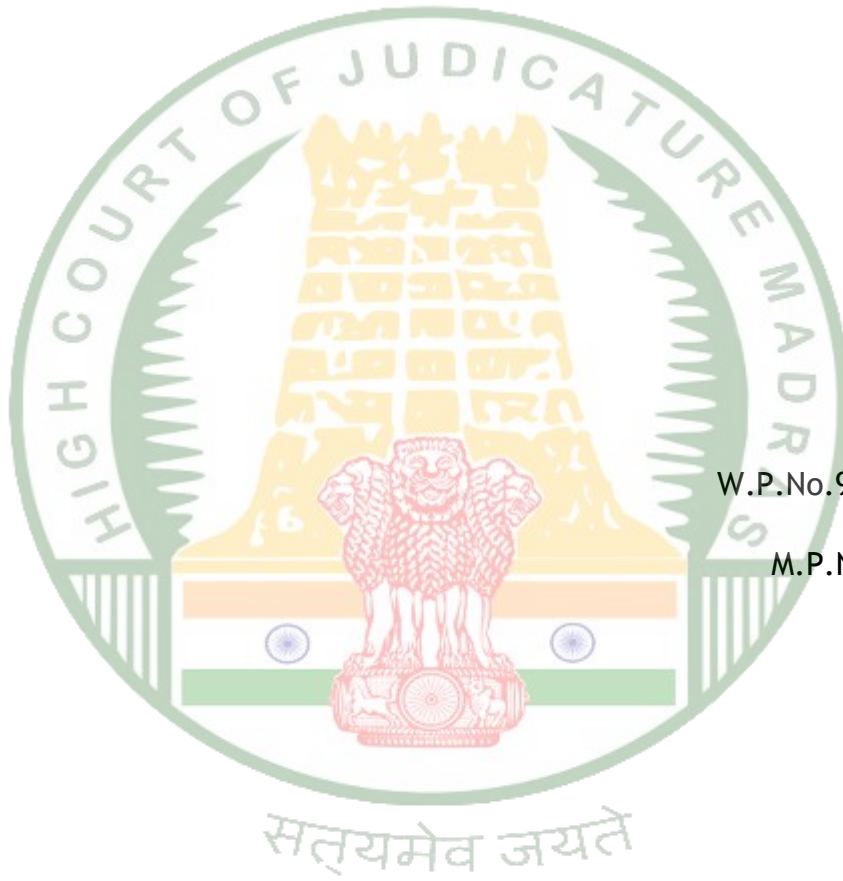
1. Government of Tamilnadu
Represented by
The Secretary to Government,
School Education Department,
Chennai - 600 009.
2. Director of Government
Examinations,
College Road,
Chennai - 600 006.
3. Tamilnadu Information Commission,
Rep. by its Registrar,
Co-operative Super Market Building,
1st Floor, Teynampet, Old No.273, New No.378,
Anna Salai, Chennai - 600 018.



WEB COPY

V. BHAVANI SUBBAROYAN, J.,

tsg



W.P.No.9797 of 2010
and
M.P.No.1 of 2010

WEB COPY

25.03.2019