

IN THE H IGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No.32801 of 2015

A.Ramesh

... Petitioner

Vs.

1.Tamil Nadu Public Service Commission,
Rep. By its Secretary,
Frazer Bridge Road,
V.O.C. Nagar, Chennai - 3.

2.The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Nungambakkam, Chennai - 34.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the order of first respondent TNPSC bearing Memo No.6808/OTD-C3/2012, dated 09.12.2015, rejecting the petitioner's explanation to the show cause notice memo No.6808/OTD-C3/2012, dated 10.09.2015, issued by the first respondent, to quash the same and to consequently select the petitioner as Asst. Commissioner in the second respondent HR&CE department with effect from 24.04.2015, grant all the benefits like salary etc., w.e.f. that date to the petitioner.

For Petitioner : Mr.N.G.R.Prasad
for M/s. Row & Reddy

For R1 : Ms.C.N.G.Niraimathi
Standing Counsel

For R2 : Mr.M.Maharaja, Spl.GP (HR&CE)

ORDER

The petitioner has filed this writ petition seeking for issuance of a writ of certiorarified mandamus to quash the show cause notice Memo No.6808/OTD-C3/2012, dated 10.09.2015 issued by the first respondent /the Secretary, Tamil Nadu Public

Service Commission (TNPSC), Chennai, and for a consequential direction to appoint him as Assistant Commissioner in the second respondent - Hindu Religious and Charitable Endowments (HR & CE) Department, with effect from the date on which other 3 selected candidates were appointed as per the Notification No.2/13, dated 21.02.2013.

2. Mr.N.G.R. Prasad, learned counsel for the petitioner pleaded that the petitioner was appointed as Executive Officer (E.O.) in the second respondent department through direct recruitment conducted by the first respondent TNPSC. While he was working in the said post, he took part in two selections conducted by the first respondent TNPSC for the post of Assistant Commissioner as well as Executive Officer (Grade-I) in the second respondent department. Subsequently, he was selected and appointed by direct recruitment to the post of E.O. (Gr.I) on 09.11.2011 and in the said post, he has been continuously working till now.

3. In the meanwhile, it is stated, the TNPSC issued a Notification No.2/13, dated 21.02.2013, inviting applications from the candidates for recruitment to (i) the post of Assistant Commissioner and (ii) E.O. Grade-I in the second respondent department. In the said selection process, he was ranked No.2 in the overall ranking. It is also stated that since he belongs to SC category, he would have ranked No.1 in view of disqualification of a candidate who was ranked No.1, however, he was not appointed in the post of Assistant Commissioner. On the contrary, he was issued with the impugned show cause notice proposing to cancel his selection and to debar him from writing the future examinations on the alleged ground of suppression of material facts.

4. Arguing further, the learned counsel contended that the impugned show cause notice issued by the TNPSC is against the judgment of the Hon'ble Full Bench of this Court in The Deputy Inspector General of Police, Thanjavur Range Vs. V.Rani [2011 (3) CTC 129], wherein, it is held that even for charges issued under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules (in short "Rules"), once the punishment period is over, a candidate stands qualified for further promotion. Therefore, it is contended, merely because 17(a) charge is pending against the petitioner, the respondents cannot withheld his appointment as he was ranked No.1 in SC category.

5. Continuing his arguments, it is further submitted that since the petitioner had also secured more than the cut-off marks, he was called for Certificate Verification on 03.01.2014. Explaining further, it is stated that the second respondent,

vide his proceedings dated 16.07.2014, imposed a punishment of stoppage of one increment cut with cumulative effect from 01.10.2014 to 30.09.2015 for the alleged charge that he did not take immediate steps regarding the construction put up by a private party on a temple land and that the said charge was framed under Section 17(b) of the Rules. Before the imposition of the said punishment, he had submitted his explanation stating that he was busy in attending management training from 11.02.2013 to 01.03.2013, hence, the same has been escaped from his attention. Moreover, the period of punishment also got expired on 30.09.2015.

6. While the matter stood as above, it is stated that the petitioner was issued with another charge memo dated 12.08.2014 under Rule 17(a) of the Rules on the ground that he came to attend the meeting at 10.25 a.m. instead of attending the same at 9.30 a.m. Subsequently, on receiving the explanation offered by the petitioner stating that due to heavy traffic he was unable to attend the meeting in time, the said charge was also dropped on 14.05.2015. Whiles, in respect of the Notification dated 21.02.2013, the petitioner was invited to attend the oral interview scheduled to be held on 01.09.2014, for, the second respondent TNPSC had also issued No Objection Certificate on 12.09.2014. Explaining further, it is stated that in the No Objection Certificate, although the second respondent TNPSC had chosen to mention the punishment dated 16.07.2014 imposing stoppage of one increment cut with cumulative effect, they did not mention anything about pendency of 17(a) charge. Therefore, the question of suppression of material fact while applying for the said post does not arise warranting disqualification of the petitioner. With these submissions, he prayed for allowing the writ petition.

7. Per contra, Selvi.C.N.G.Niraimathi, learned standing counsel appearing for the first respondent, by filing a detailed counter affidavit, urged this Court to dismiss the writ petition, since the petitioner even before joining the post of Assistant Commissioner in the second respondent department had deliberately and wilfully suppressed the material facts in regard to pendency of a charge memo issued against him under Rule 17(a) of the Rules. Explaining further, she has submitted that the first respondent TNPSC issued a Notification dated 21.02.2013 inviting applications from the candidates for recruitment to (i) the post of Assistant Commissioner and (ii) E.O. Grade - I in the second respondent department, fixing the last date for submission of applications and payment of fee through Bank or Post Office as 11.03.2013 and 13.03.2013 respectively. Subsequently, after the written examination was over on 30.01.2013 and 31.03.2013, the TNPSC published the list of register number of the candidates, who have been

provisionally admitted for certificate verification. Again, on 01.09.2014, the TNPSC published the list of register number of the candidates, who have been provisionally admitted for the Oral Test scheduled to be held on 16.09.2014. Accordingly, oral test was held on 16.09.2014 and that the counselling was held on 17.09.2014. Consequently, the list of selected candidates in each post other than the petitioner was forwarded to the Head of the Department on 11.11.2014.

8. Insofar as the petitioner is concerned, it is stated, although the petitioner has reached the zone of consideration for selection in the written examination and Oral Test, his selection was withheld for the reason that he had admittedly suppressed the pendency of a charge memo issued under Rule 17(a) of the Rules. It is also further stated that when Oral Test was conducted on 16.09.2014, the petitioner had produced a No Objection Certificate dated 12.09.2014 issued by the Joint Commission (incharge), wherein, it is mentioned the imposition of punishment of stoppage of increment with cumulative effect for one year under Rule 17(b) of the Rules against the petitioner. Therefore, after the Oral Test, he was informed that his result is being withheld pending decision of the respondent TNPSC on the effect of punishment pending against him.

10. Arguing further, it is submitted that the first respondent TNPSC, in the usual course of considering the suitability of a candidate for direct recruitment, addressed the Commissioner of HR & CE Department vide its letter dated 18.11.2014, calling for the details regarding the character and antecedents and suitability of the petitioner. In turn, the Commissioner of HR & CE Department submitted his report dated 09.02.2015 on the character and antecedents of the petitioner, whereby it is revealed about the pendency of two charge memos dated 12.08.2014 and 27.10.2014 against the petitioner. But, unfortunately, the petitioner did not disclose the charge memo dated 12.08.2014 even at the time of Oral Test held on 16.09.2014. However, conveniently, he has chosen to disclose the same for the first time only on 12.08.2015, that too due to the dropping of both the charges, namely, (i) charge memo dated 12.08.2014 issued for not attending the meeting in time was dropped on 14.05.2015 and (ii) another charge memo dated 27.10.2014 for not maintaining the temple pond properly was dropped on 20.05.2015. While this being the position, it is not known how he can keep quiet while attending the Certificate Verification held on 15.09.2014 and therefore, it is contended, such an attitude of the petitioner clearly shows that he had deliberately suppressed the material facts, which are essential criteria for deciding the candidature.

10. It is further contended that with regard to service candidates, although the TNPSC has issued specific instruction to all those service candidates that he/she does not suppress any charges/punishments, which were pending/awarded by the employer, contrary to the said instruction, the petitioner has not informed about the pendency of the charge memos dated 12.08.2014 and 27.10.2014 against him and this has resulted in initiation of disciplinary action against him. Therefore, due to the suppression of material facts and also in view of a decision of the TNPSC to cancel his selection, a show cause notice dated 10.09.2015 was issued to him. On receipt of the said show cause notice, the petitioner had submitted his explanation dated 26.09.2015, besides moving the present writ petition. This Court, vide its order dated 14.10.2015, passed an interim order directing the first respondent TNPSC to consider the explanation dated 26.09.2015 submitted by him to the impugned show cause notice and pass orders on or before 07.12.2015 and then communicate the decision taken therein to the petitioner. In obedience to the said order passed by this Court, the TNPSC considered his representation and not being satisfied with his explanation and record of service, it had decided to debar him from appearing for the examinations / selection to be conducted by the TNPSC for one year, besides rejecting his application, vide its Memo dated 09.12.2015. The said decision has also been communicated to the petitioner. Therefore, it is contended, the petitioner has no locus-standi to question the impugned show cause notice issued against him for suppression of material facts. On this basis, she prayed for dismissal of the writ petition.

11. Heard the learned counsel appearing on either side and perused the materials available before this Court.

12. Given the facts and circumstances of the case, it is apposite to extract below the instructions given in the Notification No.2/2013, dated 21.02.2013 issued by the TNPSC.

"5H(k):- Information relating to debarment by any recruiting agency, criminal or any disciplinary proceeding initiated or finalised should also be furnished to the Commission.

13. Candidates should apply only through online in the Commission's Website www.tnpsc.gov.in or in www.tnpscexams.net. Candidates who wish to apply for both the posts can submit a single application for both the posts.

* Please note that all the particulars mentioned in the online application including Name of the Candidate,

Post Applied, Communal Category, Date of birth, Address, E-mail ID, Centre of Examination etc. will be considered as final and no modifications will be allowed after the last date specified for applying online. Since certain fields are firm and fixed and cannot be edited, candidates are requested to fill in the online application form with the utmost care and caution as no correspondence regarding change of details will be entertained.

14(g):- If any of their claims is found to be incorrect, they may render themselves liable to disciplinary action by the Commission."

A bare perusal of Clause 5(k) shows that any criminal/disciplinary proceeding initiated or finalised should be furnished to the Commission. In the present case, the charge memo dated 12.08.2014 issued against the petitioner for not attending the review meeting in time was dropped on 14.05.2015. However, although the petitioner had appeared for Certificate Verification held on 15.09.2014, he did not disclose anything about the pendency of the said charge memo dated 12.08.2014.

13. It is also not in dispute that the petitioner is a service candidate, as he has been working as Executive Officer in the second respondent department since 09.11.2011, therefore, having already appeared for the examinations conducted by the TNPSC several times, he is expected to follow the instructions strictly. The TNPSC has come to know the pendency of charges against him only from the No Objection Certificate dated 12.09.2014 issued by the Joint Commissioner (incharge), in which, it is stated that the Commissioner of the second respondent department, vide his proceedings dated 16.07.2014, imposed a punishment of stoppage of increment with cumulative effect against the petitioner under Rule 17(b) of the Rules. This was not disclosed by the petitioner as adumbrated in Clause 5(k) of the Instruction, therefore, I am of the view that the TNPSC has rightly issued the impugned show cause notice calling upon him to show cause as to why he should not be debarred from appearing for the examinations / selections.

14. One of the contentions of the learned counsel for the petitioner is that in view of a decision of Hon'ble Full Bench of this Court in V.Rani's case (cited supra) holding that once a punishment is over, the authority cannot withhold the promotion, the present impugned show cause notice proposing to debar him from appearing for the examinations/selections on the

ground of non-disclosure of charges framed under Rule 17(a) of the Rules cannot be sustained. In this regard, it is apposite to extract paragraph No.28 of the said judgment, which is quoted below:-

"28. Therefore, after analysis of the entire law on the subject, we answer the reference as follows:

1) During the period of currency of minor punishment, an employee cannot claim as a matter of right to be promoted to the next category merely on the basis that he is otherwise fit for promotion and to that extent, the finding of the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350] stands overruled. It is needless to state that after the currency of punishment period, the Government servant is entitled to be considered for promotion to the next post, if otherwise eligible.

2) If any benefit has been conferred on the party to the judgment rendered by the Division Bench in Subramanian v. Government of Tamil Nadu rep. by its Secretary, Chennai and others [2008 (5) MLJ 350], the same shall not be affected by the judgment of this Bench since there is a factual finding in that case that there was a technical lapse committed by the delinquent and no financial loss caused.

3. The detailed instructions issued by the Government in G.O.Ms.No.368, Personnel and Administrative Reforms Department dated 18.10.1993 issued by the Chief Secretary to Government by order of the Governor, cannot be equated to the statutory rules framed under the proviso to Article 309 of the Constitution of India and it can utmost be administrative instructions issued under Article 162 of the Constitution of India. In any event, the said Government Order does not deal with the case of promotion of a Government servant during the currency of punishment.

4. The Government letter No.18824/S/2005-2, Personnel and Administrative Reforms (S) Department dated 7.10.2005 with annexures 1 to 7 and the letter No.248 (P&AR) Department dated 20.10.1997 are not statutory rules framed under proviso Article 309 of the Constitution of India and cannot be read either with the Tamil Nadu

Government Servants Conduct Rules, 1973 or under the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

5. Consequently, the embargo put on the right of Government servant for being considered for promotion for a further period, after the period of minor punishment is over, in the name of check period viz., one year in the case of censure and five years in the case other minor punishments is illegal and impermissible under the statutory rules."

A mere reading of the above said ratio shows that the above cited case relates to only for promotion, not for any fresh appointment. In the case on hand, the issue raised is only with regard to fresh appointment. Secondly, in the above cited case, nowhere it is stated whether concealing of disciplinary proceedings either concluded or pending could be an impediment for appointment.

15. It is also pertinent to note that since the petitioner happens to be a service candidate, in order to find out his suitability, the TNPSC, vide its letter dated 18.11.2014, called for the details regarding the character and antecedents of the petitioner. On receipt of the same, the Commissioner of the second respondent department, vide his letter dated 09.12.2015, submitted his report with regard to his character and antecedents and from the said report, it is revealed that the petitioner was issued with two charge memos dated 12.08.2014 and 27.10.2014. Whiles, it is not known how the petitioner has failed to disclose the pendency of those charges when he had attended for the Certificate Verification held on 15.09.2014.

16. Thus, in view of suppression of material facts contrary to the instruction given in the Notification dated 21.02.2013 by the TNPSC, this Court is not inclined to entertain the prayer as sought for by the petitioner. Therefore, the writ petition fails and the same is dismissed as devoid of any merit. No Costs. M.P.No.1 of 2015 is closed

Sd/-
Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

rkm

To

1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C. Nagar, Chennai - 3.

2.The Commissioner,
Hindu Religious & Charitable
Endowment Department,
Nungambakkam, Chennai - 34.

+1cc to Mr.Row and Reddy, Advocate SR.No.21077

+1cc to Government Pleader SR.No.21346

W.P.No.32801 of 2015

RK(CO)
TR(06/04/2018)



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