

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved : on 13.02.2018

Order Delivered : on 14.06.2018

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition Nos.5604 of 2015 and 35760 of 2016

S.Alagesan

... Petitioner in both WPs

vs.

1.Government of Tamil Nadu,
Rep. By its Secretary,
Personal and Administrative
Reforms Department,
Secretariat, Fort St. George,
Chennai - 9.

2.Tamil Nadu Public Service Commission,
Rep. By its Secretary,
Park Town, Chennai - 3.

3.The Transport Department,
Rep. By its Secretary to Govt.,
Secretariat, Chennai - 9.

4.The Transport Department,
Rep. By its Commissioner,
Chepauk, Chennai - 5.

... Respondents in W.P.No.5604/15

1.Government of Tamil Nadu,
Rep. By its Secretary,
Personal and Administrative
Reforms Department,
Secretariat, Fort St. George,
Chennai - 9.

2.Tamil Nadu Public Service Commission,
Rep. By its Secretary,
Park Town, Chennai - 3.

3.The Principal Secretary,
Home Dept. (Transport II), Secretariat,
Chennai - 9.

4.The Transport Department,
Rep. By its Secretary to Govt.,
Secretariat, Chennai - 9.

5.The Transport Department,
Rep. By its Commissioner,
Chepauk, Chennai - 5.

6.V.Padmapriya
7.P.Sathya
8.S.Rajarajeswari
9.S.Gunasekaran
10.A.Mohammed Meera
11.A.K.Tharaneethar
12.G.Rajkumar
13.B.Arunkumar

..... Respondents in W.P.No.35760/16

Prayer in W.P.No.5604/15:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus to direct the second respondent to produce the answer sheet of the petitioner vide Sl.No.00101223 by giving credit to the incorrect key answer formulated for question Nos.63 and 69 for the examination held on 26.08.2012 for the post of Motor Vehicles Grade II in the Tamil Nadu Subordinate Service No.068 and consequently direct the second respondent to admit the petitioner to the oral test for appointment by direct recruitment to be held on 05.03.2015.

Prayer in W.P.No.35760/16:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the provisional select list dated 19.08.2016 on the file of the second respondent pursuant to the Notification bearing No.24/12, dated 25.06.2012 and quash the same insofar as the candidates/respondents 6 to 13 selected in the place of the petitioner and direct the second respondent to conduct the interview to the petitioner and select the petitioner if he is otherwise eligible to be appointed for the post of Motor Vehicle Inspector Grade-II in the Tamil Nadu Subordinate Service (Code 068) and pass such further orders.

For Petitioner : Mr.U.Karunakaran

For R2 in both WPs : Mr.P.H.Aravindh Pandian, AAG
Assist. By Dr.M.Devendran,
standing counsel for TNPSC

For R1, R3 & R4 in W.P.No.5604/15
and for R1 and R3 to R5
in W.P.No.35760/16 : Mr.V.Kadhirvelu, Spl.GP

For R6 to R13
in W.P.No.35760/16 : No Appearance

COMMON ORDER

Mr.S. Alagesan, has filed two writ petitions. W.P.No.5604 of 2015 has been filed seeking for issuance of a writ of mandamus to direct the second respondent to produce the answer sheet of the petitioner bearing Sl.No.00101223 by giving credit to the incorrect key answers formulated for question Nos.63 and 69 in the written examination held on 26.08.2012 for the post of Motor Vehicle Inspector Grade-II in the Tamil Nadu Subordinate Service No.068.

2. W.P.No.35760 of 2016 has been filed seeking to quash the provisional select list dated 19.08.2016 published by the second respondent / TNPSC pursuant to the Notification bearing No.24/12, dated 25.06.2012, insofar as the respondents 6 to 13, who were selected in the place of the petitioner, with a further direction to the TNPSC to conduct the interview to the petitioner and select him if he is otherwise eligible to be appointed for the post of Motor Vehicle Inspector Grade II in the Tamil Nadu Subordinate Service (Code 068).

3. Mr.U.Karunakaran, learned counsel for the petitioner submitted that the petitioner is an Ex-Service man and he had served as Air Officer in the Indian Air Force and he had also served as a Senior non-commissioned officer in charge of Mechanical Transport, repairing and servicing section in Indian Air Force. After completion of 20 years of service, he was relieved from the Air Force with effect from 13.11.2006. Thereafter, he was appointed as Assistant Draftsman Grade-II in the office of the Chief Engineer, Water Resources Department, Coimbatore, and even now, he is serving there in the said post.

4. In the meanwhile, it is stated, the first respondent, based on the recommendation of the Additional Director of Ex-Servicemen's welfare, was pleased to pass G.O.Ms.No.106, dated 11.06.1999, directing for the automatic acceptance of equivalence of various military Trades with that of Civil Trade as published by the Government of India and also recognizing the same for the purpose of employment in the public services of the State. Based on the said recommendation, the petitioner had also applied for the post of Motor Vehicle Inspector Grade-II pursuant to the Notification dated 25.06.2012 issued by the TNPSC and thereafter, he had also appeared for the written examination held on 26.08.2012. In the written examination, he had secured 237 marks out of 300 marks.

5. Learned counsel for the petitioner further submitted that in the said written examination, the key answers for question Nos.63 and 69 were incorrect as per the prescribed

Textbooks published by R.S.Khurimi & J.K.Gupla and Automobile Engineering by R.B.Gupta. Therefore, he gave a representation dated 15.02.2013 to the second respondent, but, he did not receive any response from the first respondent. On the contrary, the second respondent TNPSC published a list of candidates eligible for the Oral Test to be held on 05.03.2015, but, in the said list, the name of the petitioner was not found place for the reasons best known to the second respondent.

6. Continuing his arguments, learned counsel further stated that the second respondent, having found that the petitioner is fully eligible for the said post and thereby having permitted him to appear for the written examination, ought to have allowed him to participate in the oral test, as he had secured 237 marks out of 300 marks in the written examination, which is higher than the cut-off marks of 213 fixed for BC category. Therefore, he pleaded, a direction may be given to the TNPSC to conduct the oral test for the petitioner.

7. In respect of W.P.No.35760 of 2016 filed by the petitioner, learned counsel for the petitioner submitted that the petitioner, who belongs to BC category, had secured 237 marks out of 300 marks in the written examination, which is more than 213 marks fixed for the said category. It is further stated that the candidates, belonging to BC category who have secured lesser marks than the petitioner, were called for the oral test and they were shown in the provisional selection list published by the TNPSC. It is further stated that even assuming that he would get only the lowest marks of 18 in the interview, he would have secured 255 marks (237+18) and thereby he would become second topper in the B.C. Category out of 3 male vacancies. Therefore, the approach adopted by the TNPSC in not calling him for the interview on the ground that he did not enter his experience details while filling the online application is totally bereft of any merit.

8. Mr.P.H.Aravindh Pandiyan, learned Additional Advocate General appearing for the TNPSC, submitted that after the hosting of tentative answer keys in the Commission's website on 29.08.2012 giving 7 days time to the candidates to send their suggestion/representation from the date of publication of tentative keys, whatever the representations received from the candidates within such time were placed before the Expert Committee and thereafter, the correct final answer keys have been finalized and transferred to the selection processing section for further action and accordingly, the answer papers have been valued. Subsequently, the candidates were selected provisionally for certificate verification / oral test, based on the marks obtained by the candidates in the written examination, number of vacancies and rule of reservation for appointment. But, in the case on hand, the petitioner has claimed that he is an Ex-serviceman in his online application and again, he has

claimed that he is possessing the qualification of Diploma in Automobile Engineering and thereby he has also appeared in the written examination in the subject of Automobile Engineering. Therefore, since his workshop / driving experience did not match with his educational qualification of Diploma in Automobile Engineering, the Selection Committee has not rightly summoned him for the oral test for the post of Motor Vehicle Inspector Grade-II.

9. Learned Additional Advocate General, by referring to a detailed counter affidavit filed in W.P.No.35760 of 2016, submitted that while submitting the application, he had also enclosed a copy of the driving license issued by the India Driving Licenses (TN) for Heavy Motor Vehicle, besides, he had also enclosed a copy of the experience certificate in repairing, servicing and test driving of the vehicles since July, 1988. On receipt of the same, his experience certificate was placed for scrutiny to ascertain as to whether it is equal to the experience required as prescribed in the Rules and Notification. The Regional Transport Officer, Poonamallee, Chennai, has submitted a report stating that the genuineness of the experience certificate could not be confirmed as the subject certificate was not issued by that Unit. It is further contended that since he has suppressed the details regarding the previous experience in the online application, he was not called for the interview, therefore, he has to accept the consequences in view of suppression of material facts. Hence, on this score, learned Additional Advocate General prayed for dismissal of the writ petitions filed by the petitioner.

10. I fully agree with the above said submissions of the learned Additional Advocate General for the TNPSC. Before dealing with the other issues raised by the petitioner whether the approach adopted by the second respondent in not inviting him to take part in the oral test was justified or not, it is to be noted that as a matter of fact, since the petitioner has approached this Court under Article 226 of the India, he should have come to this Court with clean hands, without suppressing any material facts. As stated by the learned Additional Advocate General, since the petitioner did not mention the details regarding his previous appearance under the relevant column "previous appearance for oral test / written test", the application of the petitioner was processed based on his application for the recruitment year 2012-2012 alone and thereafter, to determine whether the experience possessed by the candidates may be considered as equivalent to the workshop experience announced in the TNPSC's Notification, an Expert Committee meeting was convened on 04.03.2013, whereby it was resolved to forward the copies of the experience certificate produced by the three Ex-servicemen candidates, including the petitioner, to the Regional Transport Officer, Poonamallee,

Chennai, to verify the genuineness of the experience certificates produced by the candidates as they were in different format. Subsequently, on scrutinizing the same, the said authority has submitted his report stating that the genuineness of the experience certificate of the petitioner could not be confirmed as the subject certificate was not issued by that particular Unit. Relevant portion thereof is extracted below:-

"Genuineness of the Experience Certificate in respect of service No.689750-N Ex. Sgt. S.Alagesan, could not be confirmed as subject certificate was not issued by this Unit."

11. Further, it could be seen from a copy of the application pertaining to the petitioner that he has not mentioned any detail in the column provided for "previous appearance for oral/ written test." It is also to be noted that after his 20 years of services in the Indian Airforce, he has been working even now as Assistant Draftsman Grade-II in the office of the Chief Engineer, Water resources Department, Coimbatore, therefore, the petitioner should have disclosed the particulars sought for with regard to his previous experience as well as his previous appearance of oral/written test conducted by the TNPSC. Therefore, non-disclosure of such facts would certainly amount to concealment of material facts.

12. Thus, on the ground of concealment of material facts, I do not find any merit in the writ petitions and accordingly, they are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Personal and Administrative
Reforms Department,
Secretariat, Fort St.George,
Chennai - 9.

2.The Secretary,
Tamil Nadu Public Service Commission,
Park Town, Chennai - 3.

3.The Secretary,
The Transport Department,
Secretariat, Chennai -9 .

4.The Commissioner,
The Transport Department,
Chepauk, Chennai - 5.

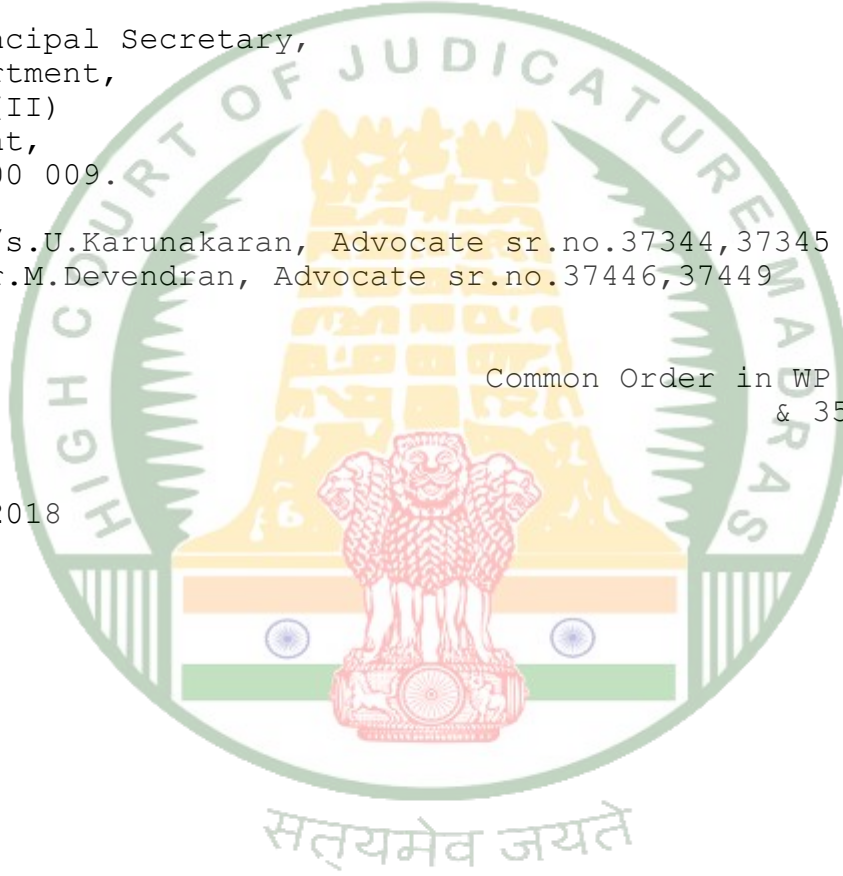
5.The Principal Secretary,
Home Department,
Transport (II)
Secretariat,
Chennai 600 009.

+2cc to M/s.U.Karunakaran, Advocate sr.no.37344,37345

+2cc to Dr.M.Devendran, Advocate sr.no.37446,37449

Common Order in WP Nos.5604/15
& 35760 of 2016

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nr 26/06/2018



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