

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24.06.2019

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THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No. 4622 of 2019

&

W.M.P.No.5230 of 2019

M.Neelakandan

...Petitioner

Vs.

Tamil Nadu Public Service Commission,
Rep by its Secretary, TNPSC Road,
Park Town, V.O.C.Nagar,
Chennai - 600 003.

...Respondent

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing respondent to include the name of the petitioner in the result published by the respondent on 01.02.2019 for appointment by direct recruitment to the post of Agricultural Officer (Extension) in the TNAE Service with appropriate seniority and other attendant benefits on par with the candidates declared selected under the list dated 01.02.2019.

For Petitioner : Mr.A.Arulmozhi

For Respondent : Mr.M.Devendran,
Standing Counsel

ORDER

The relief sought for in the present writ petition is to direct the respondent to include the name of the petitioner in the result published by the respondent on 01.02.2019 for appointment by direct recruitment to the post of Agricultural Officer (Extension) in the TNAE Service with appropriate seniority and other attendant benefits on par with the candidates declared selected under the list dated 01.02.2019.

2. The respondent has invited applications for recruitment to the post of Agricultural Officer (Extension) in Tamil Nadu Agricultural Extension Services, by passing a notification in Notification No.9 of 2018. The petitioner, who has qualified as per the terms of the notification, applied for consideration of

his candidature and the same was registered on 26.05.2018 through on-line. In one of the columns, in the application form, there was a question "Are you a Government Employee". The petitioner who is an employee of the State Bank of India as Junior Agriculture Associate, having been employed from 19.12.2016 till the date of his application, has answered as "No" to the question, since, admittedly, he was not a Government Employee. The petitioner received hall ticket for the written examination held on 11.07.2018 and had appeared and the result of the written examination was published on 17.10.2018.

3. The petitioner was successful in the written examination and he was thereafter asked to appear for oral test, which was conducted on 04.01.2019. The petitioner was directed to produce all original documents in support of his claim. The petitioner submitted the required documents and after verification of the documents by the Officers, the petitioner was enquired as to why he has answered "No" for the question whether he was a Government Employee. To this the petitioner clarified that the service of the State Bank of India comes under Public Sector Undertaking and not Government Service. Therefore, the petitioner correctly indicated the answer as no, since there was no other details sought in their question as to whether a person is employed in local body or public sector undertakings etc.

4. Thereafter, the petitioner was directed to submit 'No Objection Certificate' from the his employer and the same was also submitted. On 08.01.2019, the respondent published the result of the selection, by publishing the marks obtained by the candidates. Further, against the petitioner's registration number, it appeared that the result is pending production of 'No Objection Certificate' in prescribed format. On this, the petitioner obtained a fresh 'No Objection Certificate' in a prescribed format on 09.01.2019 and submitted the same in person on 10.01.2019.

5. Thereafter, final result was published on 01.02.2019, publishing the result of selected candidates for appointment, by direct recruitment to the post of Agriculture Officer (Extension). The petitioner's name was not found in the list of the selected candidates. The persons, who obtained lesser marks than the petitioner, who belongs to the same category to which the petitioner belonged were included in the selected list. The petitioner has also submitted a representation in this regard on 05.02.2019 and the same was also delivered to the respondent on 06.02.2019. Since, no response was forthcoming from the respondent, the petitioner is before this Court.

6. Mrs.Arulmozhi, learned counsel for the petitioner would submit that the answer to the question in one of the columns of

the application form was rightly indicated by the petitioner as "No" since, the question was merely asking a candidate to say Yes/No as to whether the candidate is a Government servant or not. No other answer would be acceptable through on-line mode of application except saying Yes/No.

7. Admittedly, the petitioner, who is an employee of State Bank of India cannot answer Yes to the question as that would be a sure disqualification, as a bank employee can never be construed as Government employee under any definition. Unfortunately, only for that reason, the petitioner's name was not included in the selected list, despite he is eligible to be included in the list.

8. The above facts have not been disputed by the respondent in the counter affidavit. According to the counter affidavit and also submissions by the learned counsel for the respondent, reference is drawn to para b(ii)(a) of the instructions to the applicant under heading debarment, which reads as follows:

"(b)(ii) Suppression of material information regarding
"(a) Previous appearances or availing free chances,
employment in Government or Local Bodies, Public
Corporations etc.,"

9. According to the respondent, the petitioner had suppressed material information in terms of the above provision and therefore, the Commission decided not to consider the petitioner for further selection. In fact, the learned counsel for the respondent/Commission would submit that even employees employed in Public Sector Undertakings are expected to answer Yes to the subject question and since, the petitioner has answered no, it amounted to suppression of material information.

10. This Court is unable to appreciate such strange argument emanating from none other than Public Service Commission, which is entrusted with the important task of recruiting candidates to public service in Tamil Nadu. In fact, the answer by the petitioner as "No" is the correct answer as answer "Yes" would surely invite disqualification, since, under no stretch of definition, an employee in Public Bank can be construed as one of the Government servants. Therefore, the petitioner has rightly indicated his answer as "No" and unfortunately, for the right answer, the petitioner is now sought to be penalized by the blatant wrong approach of the Commission.

11. In fact, the learned counsel for the petitioner would draw support from the decision of the learned Division Bench of this Court rendered in W.A.No.1280 of 2009 dated 10.04.2019, in which the similar issue came up for consideration, wherein, an

employee of Reserve Bank of India had indicated an answer as "No" to a question whether he was a Government Employee. The learned Judges of this Court have reasoned that in fact, if answer is "Yes" would invite disqualification and that answer "No" was the right answer. The learned Judges concluded in para 31 as under;

"31. The appellant very correctly indicated that he is not a Government employee. However, his candidature was rejected. The other local body employees and Bank Employees who have recorded as if they belong to Government service were not subjected to any such disqualification. If we go by the tenor of the question, "Are you a Government employee", the Bank employees who are claiming that they are Government employees would suffer disqualification, as they have given a wrong statement. We therefore, reject the contention taken by TNPSC on the basis of Clause 19 of the instructions."

12. This Court is unable to appreciate as to how the respondent/ Commission could be so awful in construing answer "No" as a wrong answer, where even common sense would dictate that the answer indicated by the petitioner is perfectly in order. Either the Public Service Commission is fully ignorant of expression "Government Service" or deliberately unwilling to go beyond the rigid formation of questions which the opinion of this Court is wrongly phrased and framed.

13. The right of the eligible candidates like the petitioner herein, is sought to be negated and trifled upon, by the Commission by its sheer lack of knowledge of definition of "Government Service".

14. For the above said reasons, this Court is of the view that the petitioner has made out a clear case for grant of relief. In fact, this is a case where the writ petition is to be allowed by imposition of cost on the Commission for its wrongful approach and scuttling the right of the petitioner of his selection and appointment on wrong and untenable grounds, but refrains from doing so.

15. In the said circumstances, the writ petition is allowed and the respondent is directed to include the name of the petitioner in the result published on 01.02.2019 for appointment by direct recruitment to the post of Agriculture Officer (Extension) in Tamil Nadu Agriculture Extension Service with appropriate seniority on par with the candidates, who were already included in the selected list, dated 01.02.2019. The respondent is directed to pass appropriate orders as indicated

above within a period of two weeks from the date of receipt of this order.

16. In the result, the writ petition is allowed. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Deputy Registrar (CJ Conf.,)

//True Copy//

Sub Assistant Registrar

mrm

To

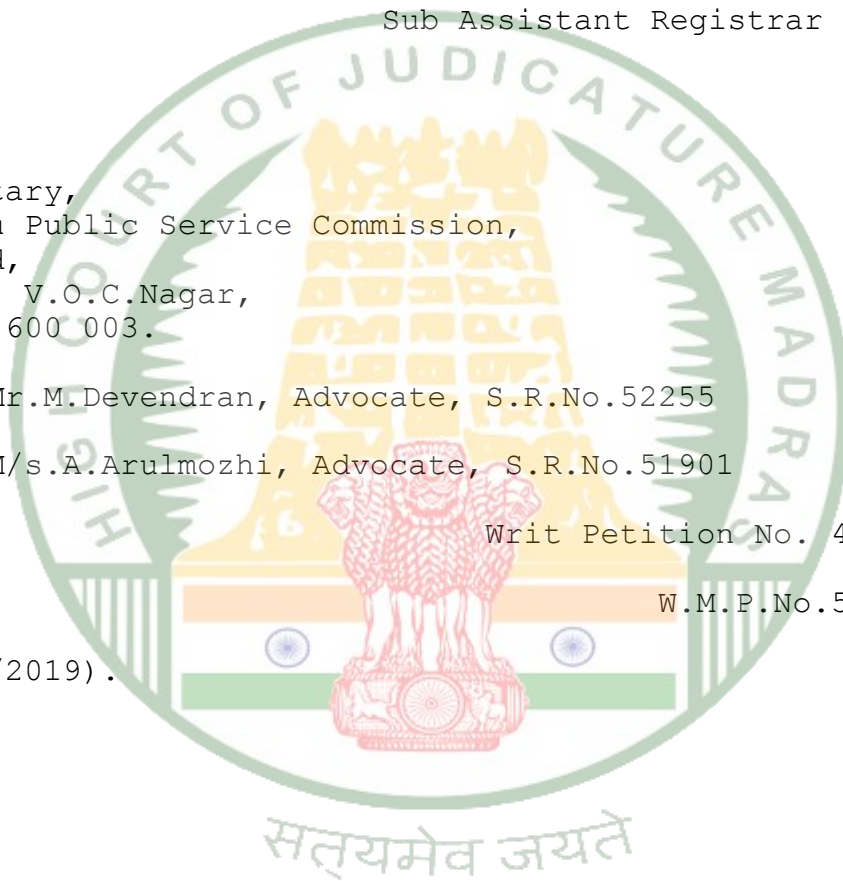
The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road,
Park Town, V.O.C.Nagar,
Chennai - 600 003.

+1 cc to Mr.M.Devendran, Advocate, S.R.No.52255

+1 cc to M/s.A.Arulmozhi, Advocate, S.R.No.51901

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&
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SV(CO)
SSM(24/07/2019).



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