

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
04.04.2019

Delivered on
10.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.1280 of 2019

E.Manoj Kumar

... Appellant

Vs

Tamil Nadu Public Service Commission,
rep. By its Secretary,
Frazer Bridge Road,
VOC Nagar, Chennai 3

.... Respondent

Appeal filed against the order passed by this Court dated
26.3.2019 in WP No.1954 of 2019.

W.P.No.1954 of 2019:

Writ Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Mandamus, directing the
Respondent to interview the petitioner for the post including in
combined civil services- I Examination Group-I services exam
2014-2016 declare the result and issue selection / posting
orders to the petitioner with due preference seniority and
consequential monetary and other benefits which he would have
got but for the illegal action of the Respondent in preventing
him from participating in the interview on 22.01.2019.

For appellant : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents : Mr.V.T.Gopalan, Senior Counsel
for Ms.C.N.G.Niraimathi for TNPSC

J U D G M E N T
K.K.SASIDHARAN, J.

INTRODUCTORY :-

The format of application containing the questionnaire
published by the Tamil Nadu Public Service Commission
(hereinafter referred to as TNPSC) for Combined Civil Services-I
Examination, (Group-I Services), contain only one column for
disclosing the present employment viz., "Are you a Government
employee". In case the answer is in the positive, the next
question would be posed for disclosure of the Department,

designation and other related particulars. Since the Reserve Bank employee is not a Government servant, the appellant in his answer to the query, "Are you a Government employee", answered in the negative. The appellant was ultimately selected for appointment to the post of Deputy Superintendent of Police (Category II) in the Tamil Nadu Police Service, pursuant to the interim order in the writ petition challenging the order withholding his result on the ground of suppression of material particulars in the application form regarding the employment in Reserve Bank of India (hereinafter referred to as "RBI"). The learned Single Judge ultimately dismissed the Writ Petition on the ground that the instruction to the candidates contain not only the Government service but also all other services and as such, the non disclosure of the Bank service would amount to suppression of material information attracting disqualification.

Conspectus of facts:-

2. The appellant came out successful with 9th State Rank in the Higher Secondary Examination 2008 and got selected for admission to the MBBS course under the State quota. However, he took only engineering course. After securing engineering degree from Anna University, the appellant got appointment in the RBI in 2016.

3. The TNPSC issued a notification on 9 November 2016 for appointment to the Group I posts in the State service.

4. Clause 15(g) of the instructions to the candidates provides that persons who are in the service of the Indian Union or a State in India, or quasi Government organizations constituted under the authority of the Government of India or of a State in India, whether in regular service or in a temporary service need not send the application through their head of Department or employer and they can apply directly to the TNPSC after informing the employer, the only requirement being to submit the no objection certificate during the time of certificate verification. However, in the format of the application, there was no column for declaring the employment status other than the Government service.

5. The appellant while filling up the application, to the question "Are you a Government employee", answered "No".

6. The appellant appeared for the written examination and came out successful. During the time of certificate verification, he produced the no objection certificate from RBI, which was obtained even before submitting the application in the prescribed format to the TNPSC and thereby satisfied the requirement under clause 15(g) of the instructions. However, he was not permitted to attend the oral test in view of his non disclosure of the employment in the RBI in the application form.

7. The appellant therefore, filed a Writ Petition in W.P.No.1954/2019 for a direction to the TNPSC to interview him and declare the results.

8. The TNPSC pursuant to the interim order in the Writ Petition, interviewed the appellant and he was selected for appointment to the post of Deputy Superintendent of Police.

9. Thereafter, the Writ Petition was taken up by the learned Single Judge for final disposal along with two other Writ Petitions filed by similarly placed candidates.

10. The learned Single Judge opined that though there is no specific column for declaration of present employment by the employees other than Government employees, the instructions to the candidates contain such details and therefore, the appellant ought to have filled up the column with an answer "yes". Since there was suppression of employment status in the application form, the learned Single Judge dismissed the Writ Petitions by way of a common order.

Summary of submissions:-

11. The learned counsel for the appellant contended that there was only one column to indicate the employment status and the same relates only to the Government employees. Since there was no specific column for disclosing the employment in banks and local bodies, the appellant indicated that he is not in Government service. According to the learned counsel, the appellant has given the correct answer. The fact that the other employees including those in banking service indicated that they are in Government service, cannot be a reason to hold that RBI employees are Central Government employees. The learned counsel contended that the appellant competed with large number of candidates and came out successful. However, he was denied appointment by placing reliance on a flimsy ground of non disclosure of employment in RBI in the application form, notwithstanding the factum of production of proof regarding information given in advance to RBI and obtaining no objection certificate even before submission of application for selection to TNPSC.

12. The learned Senior Counsel for TNPSC took us through the instruction to the candidates. According to the learned Senior counsel, though there was no specific entry in the application form to declare the employment in banks and local bodies, the fact remains that there was sufficient indication in the instructions to the candidates even to declare the other kinds of employment. The learned Senior counsel contended that the query in the application form regarding present employment was correctly understood by all other candidates except a few and

they have declared the banking service as Government service. The learned Senior counsel contended that RBI is a State and as such, the employees of RBI would come within the definition of "Government Employees". The learned Senior counsel further contended that nothing prevented the appellant from contacting the TNPSC before filling up the application form in case of doubt. The learned Senior counsel submitted that the Courts have held that instructions to the candidates would form part of the application form and it has got a binding effect on both the TNPSC and the candidates. Since the appellant failed to disclose the material information, his application was rightly rejected.

Analysis:

13. The appellant who was an employee of RBI submitted application for selection to the posts included in Combined Civil Service Examination (Group I Services), pursuant to the notification no.19/16 dated 9 November 2016, issued by the TNPSC. The TNPSC also published the instructions to applications, revised with effect from 7 November 2016 wherein it was stipulated that the applications should be online mode in the Commission's website.

14. The format of the application duly filled by the appellant is found in page 132 of the typed set of papers. There is a column in the application form for declaration of employment status in the following manner :

Are you a Government employee

If the answer to this question is "No", there is no need to state further. The appellant being an employee of RBI, and not a Government employee, answered the question "No".

15. Similar question was answered by another employee of RBI, which is found in page 209 of the typed book. To the question, Are you a Government Employee?, the candidate answered "yes". Since the answer was in the positive, the following further questions were asked, besides a note, which reads as follows :-

Name of the Department :
Designation :
Date of joining in service :
Have you intimated the Head of the Department about applying for this exam in writing? :

If yes, to whom (Designation & Date:

Departmental disciplinary :
proceeding

Note :- Candidates not belonging to Scs, SC(A)s, STs, MBCs/DCs, BCs and BC(M)s who have put in 5 or more years of service in State or Central Government are not eligible even though they are within the age limit.

16. It is clear from the above that in the application form, there is no dedicated column for indicating the employment status other than the Government service. Since it was online application, only in case the answer to the question is "yes", the other details like name of the Department, designation etc. would be asked. Therefore, it is clear that though there is a clause 15(g) in the instructions to the candidates for producing no objection certificate from the employer at the time of attending the certificate verification, there is no specific column for declaring the other employments like service under local body, University or quasi Government organization in the prescribed application form.

17. The appellant suffered disqualification due to the mistake committed by the outsourcing agency entrusted with the work of preparing the application form as the agency omitted to include the other services along with the Government service in tune with clause 15(g) of the instructions to the candidates.

Live Demonstration :-

18. In order to verify as to whether there is any other column in the application form for declaring the service status of the Bank employees, employees of local bodies, State undertakings etc. other than those in Government service, we directed the TNPSC to conduct a demonstration in open Court by downloading the application form and filling it with appropriate entry. Accordingly, Thiru.S.Ramamoorthy, Under Secretary, TNPSC, appeared at 1 a.m. on 4 April 2019 and conducted a live demonstration by downloading the application form. We directed him to fill up the column, Are you a Government employee with an answer, "RBI employee". When the answer was typed as RBI employee, nothing came thereafter.

19. The formation of the online questionnaire is in such a way that this question is a mandatory one without answering which, the candidate cannot proceed further.

20. The Under Secretary, TNPSC informed us that there is provision only to say "Yes or No" to the question regarding employment status and no other answer would fit in. To our question as to who did this mistake of non inclusion of other services as indicated in clause 15(g) in the application form, the Under Secretary without admitting it as a mistake, informed us that it was designed by a service provider M/s.Satvat Infosol (Pvt.) Ltd.

21. The lacuna in the questionnaire prepared by the outsourcing agency resulted in the confusion. The fact that some of the other candidates declared the employment in RBI and Banks as Government service in the application form, would not be an answer to the question as to whether such employees are actually Government employees.

22. In case the employment under the Government service column is answered as "yes", the next question "which Department" would be asked. This makes the position very clear that the intention in the application form was only to give a declaration relating to Government employment and not other services, indicated in clause 15(g) of the instructions.

23. The appellant has not taken any undue advantage by not declaring his employment in RBI. He has taken no objection certificate from RBI, well before the submission of application. The appellant failed to respond to the question with an answer "yes" only account of his clear understanding, which according to us right, that the service under the RBI is not actually a Government service.

24. The learned Senior counsel for TNPSC by placing reliance on Sections 7 and 11 of the RBI Act, 1934, contended that service in the RBI is a Central Government service. With respect, we are not in a position to subscribe to the said view.

25. (a) Section 7 of the RBI Act provides that the Central Government is empowered to give direction to the RBI after consultation with the Governor from time to time.

(b) Section 11 gives authority to the Central Government for removal of Governor, Deputy Governor or any other Director or any member of a Local Board.

(c) These two provisions would not go to show that the employees of the RBI are all Government servants. The fact that the Central Government has persuasive control over RBI would not make its employees Central Government employees.

26. It is true that RBI is a State within the meaning of Article 12 of the Constitution of India. Even then it cannot be said that its employees are all regular Government employees.

27. (a) The learned Senior counsel for TNPSC cited a decision of the Division Bench in Dr.M.Vennila vs. Tamil Nadu Public Service Commission, rep. By Deputy Secretary, 2006(3) CTC 449, in support of his contention that the instructions to the candidates are part of the application form and even in the absence of a particular column in the format, the candidates must answer correctly in case the instruction throws light on the subject.

(b) In Dr.M.Vennila, there was a column for declaration to be made by the applicant. Such a requirement to sign the declaration is also found in the instruction to the candidates. The candidate failed to sign the declaration. It was only under the said factual situation, the Division Bench made the observation quoted by the learned Senior counsel.

28 (a) Since the entire argument of TNPSC revolves around clause 15(g), we extract the said clause hereunder.

g) No Objection Certificate Persons who are in the service of the Indian Union or a State in India or in the employment of Local Bodies or Universities, or Quasi Government Organizations constituted under the authority of the Government of India or of a State in India whether in regular service or in a temporary service need not send their applications through their Head of Department or Employer. Instead, they may directly apply to the Commission after duly informing their Employer in writing that they are applying for the particular recruitment and with the condition that they should produce "No Objection Certificate" in the form prescribed below, from an authority not below their Officer / Division Head at the time of attending the Certificate Verification.

(b) Clause 15(g) does not contain an indication with regard to the requirement to state the employment status in the application form. The said clause permits the applicant to apply directly to the TNPSC without routing it through the Head of Department. The only requirement is that he should inform the employer before submission of application and produce NOC while attending the certificate verification. The appellant satisfied this condition, as he obtained the NOC before submitting the application, after disclosing his intention to apply to the Group I Post.

29. The TNPSC very much relied on clause 19 of the instructions regarding disqualification/ debarment in case of suppression of material information regarding employment.

30. In order to disclose the correct employment, there should be a specific column in the application form. Though 15 (g) and 19(4)(ii) of the instructions contain not only Government service but other services also, the fact remains that the relevant column in the application form contain only one service for disclosure viz., "Government service", it would

not be possible for a Bank employee to record that he is a Government employee. In case such a declaration of service status is given by a Bank employee indicating that he is a Government servant, he would face the disqualification/debarment in view of clause 19 of the instructions.

Conclusion :-

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.

32. The appellant has many first on his credit. Even the entry in question was correctly filled up by the appellant. He was not responsible for the preparation of an incorrect questionnaire by the TNPSC. We are therefore of the view that the appellant must succeed.

33. The order dated 26 March 2019 is set aside. The Writ Petition filed by the appellant is allowed.

Disposition :-

34. The TNPSC, pursuant to the direction issued by the writ court, interviewed the appellant and finally he was selected for appointment to the post of Deputy Superintendent of Police. Further action was not taken on account of the dismissal of the Writ Petition. In view of the reasons aforesaid, we direct the TNPSC to forward the name of the appellant to the Government for taking further action to give him order of appointment. Such exercise shall be completed within one week from the date of receipt of a copy of this judgment.

35. In the upshot, we allow the intra court appeal. No costs. Consequently, C.M.P.No.8359 of 2019 is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

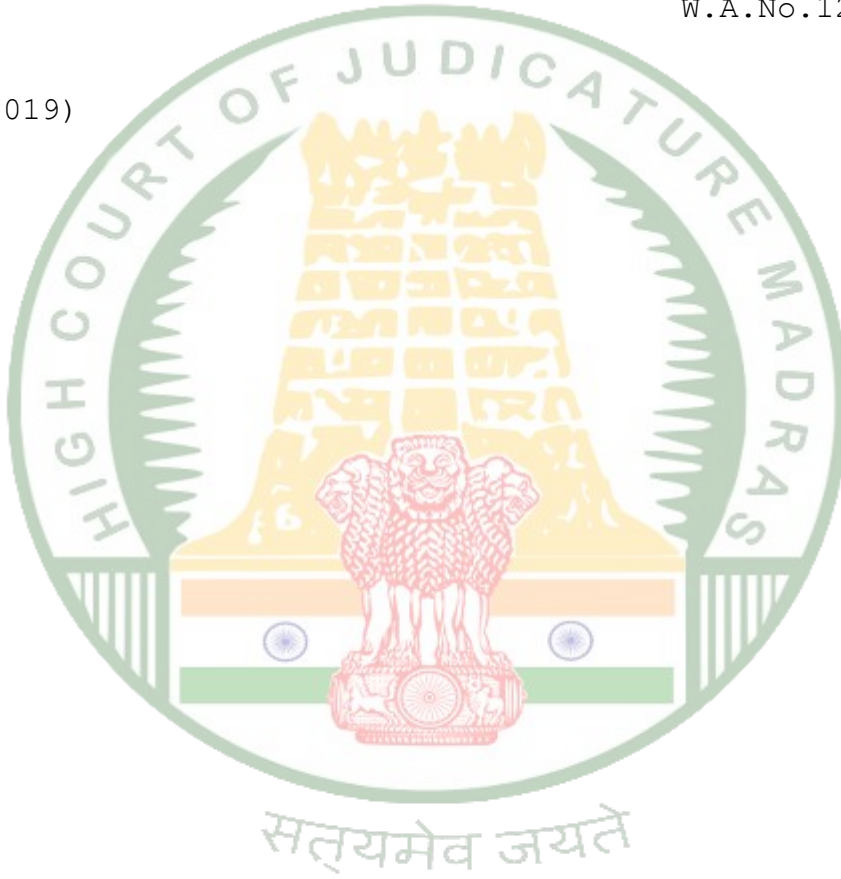
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To

1. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Chennai 3

+1 CC to M/s.Row and Reddy, Advocate sr 35414.

W.A.No.1280 OF 2019

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