

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.07.2019
CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.Nos.1318 and 1322 of 2019

W.A.No.1318 of 2019

R.FATHIMA

... appellant/ Petitioner

Vs

1 TAMILNADU PUBLIC SERVICE COMMISSION
REP.BY ITS CHAIRMAN TNPSC
ROAD CHENNAI.

2 THE SECRETARY
TNPSC, CHENNAI.

3 THE CONTROLLER OF EXAMINATIONS
TNPSC,
TNPSC ROAD CHENNAI.

4 K. KALIARAJ ... respondents/ respondents

Writ Appeal filed To set aside the order of the Learned
Judge made in WP.No.2082 of 2019 dated 26.03.2019.

W.A.No.1322 of 2019

A.K.Praveenakumari

... appellant/ Petitioner

Vs

1 TAMILNADU PUBLIC SERVICE COMMISSION
REP.BY ITS CHAIRMAN TNPSC
ROAD CHENNAI.

2 THE SECRETARY
TNPSC, CHENNAI.

3 THE CONTROLLER OF EXAMINATIONS
TNPSC,
TNPSC ROAD CHENNAI.

4 J.Jayasree ... respondents

Writ Appeal filed To set aside the order of the Learned
Judge made in WP.No.1928 of 2019 dated 26.03.2019.

For appellants : Mr.L.Chandrakumar in W.A.No.1318 of 2019
:Mr.M.Gnanasekaran in W.A.No.1322 of 2019

For Respondents: Ms.C.N.G.Niraimathi,
for respondents 1 to 3 in both appeals

Mr.M.Ravi, for 4th respondent in both appeals

COMMON JUDGMENT

INTRODUCTORY :-

The substantial issue raised in the present intra court appeals is covered by the judgment in W.A.No.1280 of 2019, which was an appeal at the instance of another disqualified candidate on the ground that in spite of his employment in the Bank, he has not disclosed that he was a "government employee" in the application form. The common order dated 26 March 2019 in W.P.No.1954 of 2019 was allowed in W.A.No.1280 of 2019 and the said judgment has become final, consequent to the dismissal of the Special Leave Petition in SLP No.12901 of 2019. Since the order which is part of the common order was allowed by the Division Bench and the dismissal of the appeal by the Hon'ble Supreme Court, the issue is no longer res integra. The appellants are entitled to succeed as the very same impugned order was confirmed by the Division Bench in W.A.No.1280 of 2019.

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

Brief facts :-

3. 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 Bank employee and employees of Food Corporation of India (hereinafter referred to as "FCI") are not Government servants, the appellants in their answer to the query, "Are you a Government employee", answered in the negative. The appellants were ultimately selected for appointment to the post of Deputy Collector in the Tamil Nadu Revenue Service, pursuant to the interim order in the writ petitions challenging the order withholding their result on the ground of suppression of material particulars in the application form regarding the employment in Bank and FCI. The learned Single Judge ultimately dismissed the Writ Petitions 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/FCI service would amount to suppression of material particulars attracting disqualification.

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

6. During the time of application, the appellant in W.A.No.1318 of 2019 was employed in Food Corporation of India. Similarly, the appellant in W.A.No.1322 of 2019 was an employee of Canara Bank. The appellants obtained no objection certificate from the Food Corporation of India and the Canara Bank respectively, and thereby satisfied the requirement under Clause 15(g). However, the appellants were not allowed to attend the oral test on account of the non disclosure of employment in the Food Corporation of India and Canara Bank respectively in the application form.

7. The appellants therefore filed Writ Petitions in W.P.Nos.1928 and 2082 of 2019 for a direction to the TNPSC to interview them and declare the results.

8. The TNPSC pursuant to the interim order in the Writ Petitions, interviewed the appellants and they were selected for appointment to the post of Deputy Collector.

9. Thereafter the Writ Petitions were taken up by the learned Single Judge for final disposal with another Writ Petition in W.P.No.1954 of 2019 and ultimately non suited the appellants.

10. The common order dated 26 March 2019 was challenged by the writ petitioner in W.P.No.1954 of 2019, before this Court in W.A.No.1280 of 2018. The writ appeal was allowed by judgment dated 10 April 2019. The said order was unsuccessfully challenged by the TNPSC before the Hon'ble Supreme Court in SLP No.12901/2019.

11. The common order in respect of one Writ Petition

has already been set aside by this Court in W.A.No.1280 of 2018. The Special Leave Petition filed against the said judgment was withdrawn by the TNPSC. The learned Standing Counsel for the TNPSC informed us that the Commission has no intention to file a review petition before this Court and the order would be complied with. Accordingly, we heard the present writ appeals, filed against the very same common order dated 26 March 2019.

12. Since the issue is squarely covered by the judgment in W.A.No.1280 of 2019, we extract below the relevant portion of the said judgment.

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.

सत्यमेव जयते

13. We have earlier posed a question as to whether the appellants have informed their employer with regard to their decision to apply to the post. The appellants have submitted that information was given to the employer. One of the appellants could not produce the letter informing the employer. However, the fact remains that both the appellants have obtained no objection certificate from their employer. The question posed by this Court with regard to prior intimation was taken advantage of by a candidate who was placed next in the select list to contend that the appellant in W.A.No.1322 of 2019, failed to inform the employer.

Not the case of TNPSC :-

14. It is not the case of TNPSC that the candidature was rejected on the ground that advance information was not given to the employer. The application was rejected only on the ground that the appellants failed to disclose their employment in the application form, notwithstanding the fact that there was no column to indicate the employment under the Food Corporation of India or Bank and the only column was in respect of the Government employment.

15. The TNPSC in its counter affidavit filed before the writ court made it very clear that the object behind asking the candidates to obtain no objection certificate from the employer is to judge the suitability of the candidate for the post. In case the no objection certificate discloses adverse entries, the candidate would be denied admission to the oral test. The scope of even the "no objection certificate" is explained by the TNPSC. Therefore, there is no question of rejecting the application on the ground that prior intimation was not given to the employer.

16. The only requirement is to obtain no objection certificate from the employer. The purpose for taking the no objection certificate is also explained by the TNPSC. The advance intimation to the employer is only for the purpose of obtaining no objection certificate at a later point of time. In fact, there is no column prescribed in the application form to state as to whether advance information was given to the employer. The mandatory requirement is only to produce the no objection certificate later.

17. The learned Standing counsel for the TNPSC very fairly submitted that there was no occasion for the TNPSC to reject the application on the ground of failure to inform the employer. The learned Standing Counsel explained the rationale behind obtaining the no objection certificate. The explanation is in tune with the observation made by us above.

18. These appeals could have been disposed of along with W.A.No.1280 of 2018 but for the delay in numbering the respective writ appeals. These two Writ Petitions were disposed of along with another Writ Petition in W.P.No.1954 of 2019. Therefore, the judgment against the common order dated 26 March 2019 would hold good even in these appeals. The appellants are similarly situated. The appellants are therefore entitled to the benefit of the judgment in W.A.No.1280 of 2019, which was against the very same common order dated 26 March 2019. We are therefore of the view that the appellants are entitled to succeed.

19. The order dated 26 March 2019 is set aside. The

Writ Petitions filed by the appellants are allowed. No costs.

Disposition :-

20. The TNPSC, pursuant to the direction issued by the writ court, interviewed the appellants and finally selected them for appointment to the post of Deputy Collector. Further action was not taken on account of the dismissal of the Writ Petitions. In view of the reasons aforesaid, we direct the TNPSC to forward the names of the appellants to the Government for taking further action to give them order of appointment. Such exercise shall be completed within a period of two weeks from the date of receipt of a copy of this judgment.

21. In the upshot, we allow the intra court appeals. No costs. Consequently, C.M.P.Nos.8981, 8969 and 11968 of 2019 are closed.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

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To

1 TAMILNADU PUBLIC SERVICE COMMISSION
REP.BY ITS CHAIRMAN TNPSC
ROAD CHENNAI.

2 THE SECRETARY
TNPSC, CHENNAI.

3 THE CONTROLLER OF EXAMINATIONS
TNPSC,
TNPSC ROAD, CHENNAI.

+1cc to Mr.M.Ravi , Advocate SR.No. 62011

+1cc to Mr.L.Chandrakumar , Advocate SR.No. 61500

+1cc to Mr.M.Gnanasekaran , Advocate SR.No. 61363

+1cc to Mr.V.Vijay Shankar , Advocate SR.No. 61340

W.A.Nos.1318 & 1322/2019

A.SK(25/07/2019)