

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.06.2019

Delivered on : 08.07.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.13346 of 2019

and

W.M.P.Nos.13460, 13462, 13467 and 15932 of 2019

S.Vignesh Petitioner

vs.

1.The State of Tamil nadu,
rep.by its Secretary,
P & AR Department,
Secretariat, Chennai-600 009

2.The Tamil nadu Public Service Commission,
rep.by its Secretary,
TNPSC Road, V.O.C.Street,
Park Town, Chennai-600 003

3.The Controller of Examinations,
Tamil Nadu Public Service Commission,
TNPSC Road, V.O.C.Street,
Park Town, Chennai-600 003

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the respondent relating to issue of final key answers published by the 3rd respondent in the second respondent's website on 03.04.2019 and the list of selected candidates provisionally admitted for Main written Examination in respect of posts included in Combined Civil Services-I Examination (Group-I Services) 2016-19 published by the 3rd respondent in the website of the 2nd respondent on 03.04.2019 and quash the same and consequently direct the respondents 2 and 3 to revise the said answer keys and the said list of selected candidates for admission to the main written examination.

For Petitioner

.. Mr.N.Subramani for
M/s.S.S.Madhavan

For Respondents .. Mr.J.Pothiraj, Spl.G.P.for R1
Mr.R.Thiagarajan, Sr.Counsel
for M/s.C.N.G.Niraimathi,
Standing Counsel for R2 and R3

ORDER

The petitioner has completed his B.Tech and M.A in Human Resource Management from Tata Institute of Social Sciences. He obtained his basic degree from SASTRA University. According to him, he is a Human Resource Professional working as Business Manager in HR in Multi National Company with a seizable remuneration per annum. According to the petitioner, he is passionate about rendering public service, therefore, had taken a decision to participate in Group I Services Examination to be conducted by the Tamil Nadu Public Service Commission (TNPSC), pursuant to its notification dated 03.01.2019.

2. According to the notification issued by the Commission on 03.01.2019, the selection process comprised three phases i.e., preliminary examination followed by main written examination and finally oral test. As far as the preliminary examination is concerned, the pattern of examination is that the question paper would contain the multiple choice questions and each question carries 1.5 marks. Thus, totaling 300 marks for total number of 200 questions.

3. The petitioner responded to the notification and after acceptance of his application, he was assigned a Registration number i.e., 010059153, in the memorandum of admission (Hall Ticket). Preliminary examination was conducted on 03.03.2019, in which the petitioner participated. In the preliminary examination a question booklet and the OMR answer sheet (Optical Mark Reader) were supplied to each of the candidates. Each question will have multiple choice of 4 answers, among which one will be the correct answer and the candidates ought to shade the appropriate circle of the relevant answer number in the question sheet supplied by the third respondent. As per the instructions, according to the petitioner, he had shaded the appropriate choice of answers and completed the examination within the prescribed time.

4. Thereafter, the Commission had published, in their official website, on 04.03.2019, details of the right key answers for all the questions in the preliminary examination. The Commission has also invited objections from the candidates to challenge the respective key answers, if there was any ambiguity or incorrect answers with reference to the materials and its source. According to the petitioner, he found 10 key answers among the total 200, were wrong. As per the publication

dated 04.03.2019, the candidates had to respond with objection within 7 days. The petitioner appears to have submitted his objections to 10 questions within the time stipulated in the publication.

5. Like the petitioner, some other candidates have also challenged certain answer keys published by the third respondent and those questions were also found to be incorrect and those candidates also submitted supporting materials. According to the petitioner, the other candidates, who identified the wrong key answers, were 7 in number and it also emerged in the process that there was one wrong question. Thus, 18 out of 200 questions were to be reevaluated by the third respondent with reference to the textbooks and other reference materials.

6. The petitioner has given the questions and the key answers published by the third respondent, which are the subject matter of controversy, in a tabular column incorporated in the affidavit filed in support of the writ petition.

7. The petitioner claims that as by self evaluation, he would have scored 175.5 marks and if 17 correct keys and one wrong question are taken into consideration and his paper is reevaluated, he would be getting somewhere around 195 marks. According to him, if proper valuation is done, his marks will be increased by 19.5 more marks.

8. While matters stood thus, without considering the objections of the petitioner and others, the third respondent published a list of candidates eligible to be admitted for main written examination on 03.04.2019, without publishing the revised answer keys, on the basis of the objections raised by the petitioner and others. According to the petitioner, even the cut off mark was not published for selection of candidates for the main examination. Therefore, the petitioner would submit that the entire process of selection has not been transparent. In the said circumstances, the petitioner is before this Court challenging the order dated 03.04.2019 relating to the final key answers published and also relating to the selected candidates, provisionally admitted for main examination.

9. Shri. N. Subramani, learned counsel appearing for the petitioner would strenuously contend that the entire process of selection appears to be defective, since as many as 17 questions were found to be having wrong key answers. If as many as 17 questions were found to be having wrong key answers and one wrong question and put together 18 questions totally, the performance of candidates and their inter se marks obtained in the preliminary examination would have serious implications. It is possible that due to wrong identification of key answers by

the question setters, the meritorious candidates may not get selected and admitted for the main examination. Therefore, he would submit that the entire selection has to be redone by the Service Commission, so that the meritorious candidates like the petitioner herein are not to be disadvantaged due to the discrepancies in the answer keys.

10. In fact, the learned counsel would submit that earlier a Division Bench of this Court has warned the Service Commission in the case of Ravi Varma Vs. The Secretary, TNPSC in W.A.No.649 of 2009 [(2009) SCC Online (Mad) 1569] and the observation of the Division Bench of this Court was relied upon by the learned counsel. He would also submit that the selection is also not transparent since no cut off marks were published in regard to admission of candidates for main examination and therefore, the petitioner is completely at a loss to understand as to what was his performance, vis-a-vis the other admitted candidates and the marks scored by the successful candidates and the failed candidates. In the absence of such details, coupled with the fact that 18 questions out of 300 questions were found to be defective, either with the wrong key answers or wrong question itself, it is very difficult for any candidate, including the petitioner, to judge his/her performance vis-a-vis of the others. Ultimately it boils down to the fact that a meritorious candidate ought not to be denied admission to participate in the main examination on the basis of incorrect valuation or incorrect setting of questions and answer keys.

11. On behalf of the petitioner, the learned counsel has relied on several decisions which need not be dealt with by this Court in view of the order proposed to be passed as under and also the averments as raised in the counter affidavit filed on behalf of the Commission.

12. In response to the notice by this Court, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for the first respondent and Mr.R.Thiagarajan, learned Senior Counsel for Mrs.C.N.G.Niraimathi, learned Standing Counsel entered appeared for the Commission.

13. A detailed counter affidavit has been filed by the Commission. In the counter affidavit, the Commission has come out with a version that it was indeed a fact that some questions were having wrong key answers and few questions have more than one key answer correct. Mr.R.Thiagarajan, learned Senior Counsel appearing for the Commission would submit that on the basis of objections by the candidates, the defects which were pointed out were rectified by the Commission in respect of some questions. According to the learned Senior counsel, the Commission had received 4,390 representations from various candidates touching

upon several questions, as soon as the tentative keys were hosted in the official website of the Commission on 04.03.2019. In order to address the concerns of the candidates, the Commission constituted an Expert Committee comprising three experts in each of the 9 subjects, in respect of which questions were asked in the preliminary examination. The Expert Committee had the sitting between 13.03.2019 and 15.03.2019 and after thorough analysis and enquiry with reference to the various objections received from the candidates, a report was prepared and the same was submitted and the key answers were finally arrived at on the basis of consensus. According to the learned Senior counsel, the outcome of the above exercise by the Expert Committee has resulted in the following decision taken by the Commission:

a) For 12 questions namely 18, 26, 40, 82, 85, 122, 128, 129, 143, 182, 184 and 194 all the options were found to have been either wrong/questions were ambiguous.

b) For 5 questions, namely, question Nos.3, 35, 60, 79 and 132 two or more than one options were correct. The questions framed and the options given were found to be correct.

c) For 7 questions, namely question Nos.15, 16, 29, 48, 117, 142 and 148 tentative answer keys alone were wrong. The questions framed and the options given were found to be correct."

On the basis of the report, the Commission accepted and acted as follows:

a) to award marks to all the candidates who appeared for the examination, in respect of 12 questions mentioned in 10(a) above.

b) to award marks to all the candidates who have shaded either of the options arrived by the expert committee, in respect of 5 questions mentioned in 10(b) above.

c) to award marks only to those candidates whose key tallied with the final key arrived by the expert committee, in respect of 7 questions mentioned in 10(c) above."

14. Thereafter, the Commission began its evaluation of the preliminary answer papers in respect of the controversial questions and according to the counter affidavit, the petitioner herein is one of the beneficiaries of the reevaluation done, after the recommendation of the Expert Committee. In fact, in the counter affidavit in respect of 18 questions, a tabular column has been incorporated, clarifying the position as narrated above.

15. The learned Senior counsel appearing for the Commission, would however submit that notwithstanding the above corrective measures initiated by the Commission, the fact of the matter is that the petitioner herein did not score enough marks in the preliminary examination for him to be admitted for the main examination in his category.

16. This Court, at this directed the Commission to produce the marks obtained by the petitioner, after subsequent evaluation done in pursuance of the recommendation of the Expert Committee and as per the direction, the same has also been produced.

17. According to the learned Senior Counsel for the Commission despite being the beneficiary of subsequent evaluation and after adding all marks, still the petitioner's mark was far below the cut off marks prescribed in the category in which the petitioner claims himself to be considered for selection. Therefore, the learned Senior Counsel would submit that in any event, after the disclosure of the above facts, it does not lie in the mouth of the petitioner to challenge the process of selection anymore.

18. As regards the objection regarding non-disclosure of marks in the preliminary examination, the learned Senior Counsel would submit that the Hon'ble Supreme Court in Union Public Service Commission, vs. Angeshh Kumar and Others [2018(2) CTC 337], has held that disclosure of marks in the preliminary examination would likely to cause conflict with the other public interest. The Hon'ble Supreme Court has also observed that the Courts are required to weigh the need for transparency and accountability on one hand and requirement of confidentiality of sensitive information on the other hand. Finally, the Supreme Court had held that the marks in Civil Service examination cannot be directed to be furnished mechanically. Therefore, the learned Senior Counsel would submit that the writ petition lacks merit and the same is liable to be dismissed.

19. Mr. N. Subramani, the learned counsel appearing for the petitioner would submit that there are certain minor discrepancies in the tabular statement incorporated in the

counter affidavit filed on behalf of the respondent Commission and drawn the attention of this Court to such discrepancies.

20. Heard the learned counsel appearing for the petitioner as well as the learned Senior counsel for the respondent Commission.

21. Although this Court finds that the writ petitioner is a meritorious candidate in view of his academic qualifications and his placement as a Business Manager in a Multi National Company, yet, ultimately this Court has to see whether his performance in the preliminary examination vis-a-vis, the other candidates is sufficient enough to propel him to be admitted for the main examination.

22. This Court was informed about the marks obtained by the petitioner by producing the mark-sheet and this Court finds that the petitioner has scored far less marks than the cut off marks prescribed for admitting him for the main examination in his category General Tern (GT). In fact, from the materials, it is seen that the petitioner himself was a beneficiary of the subsequent evaluation done by the Commission, after the recommendation of the Expert Committee.

23. Once, factually it is established before this Court that the petitioner has indeed scored far less marks than the cut off marks in his category, there is no further requirement for this Court to dig into various other submissions made on behalf of the petitioner. The allegation that the Commission has not been transparent in its selection process is not an acceptable piece of argument, since being a recruiting agency for public service in the State of Tamil Nadu, it is not expected to divulge every piece of information in the public domain, as held by the Hon'ble Supreme Court, particularly recruitment to the higher cadre, confidentiality is extremely important and any dissemination of information at the preliminary stage would ultimately result in scuttling of the remaining process of selection. Therefore, it is not in the larger public interest that the Commission should be directed to disseminate information to all candidates, thereby placing it on the public domain, which would be detrimental to the interest of the other successful candidates, who participated in the selection.

24. It is not that the Courts hands are tied when Commission is accused of irregularity of grave nature. At the same time, the power of the Court cannot be used to probe into every aspect of selection by the Commission at the drop of a hat or at the instance of one of the unsuccessful candidates.

25. In this case, ultimately it is found that the petitioner himself has not secured enough marks in his category to reach the zone of admission for the main examination. Therefore, at his instance, this Court cannot make any further probe into various other allegations raised on his behalf. In any event, admittedly, the Commission itself has identified the defects in the key answers and question and embarked upon to salvage the situation by constituting an Expert Committee. The Committee, after analysis, has recommended for evaluation of those defective question and answer keys and thereafter the marks were added, in pursuance of such recommendation. Therefore, the mistakes which were pointed out by the candidates were accepted and steps were taken immediately to rectify the same and in that process, this Court finds that no injustice has been done to any of the candidates. Hence, this Court is of the view that in the over all consideration of the merits of the case on hand, this Court need not be concerned with a minor infraction in the details submitted by the Commission, since it would not in any way tilt the balance of the case in favour of the petitioner. Therefore, this Court is of the view that the petitioner cannot have a legitimate cause for complaining in regard to the present selection. In the said circumstances, this Court is of the opinion that the petitioner has not made out a case for intervention of this Court and therefore, the writ petition is liable to be dismissed.

26. Before parting with this case, this Court is duty bound to remind the Commission about the observations of the Division Bench of this Court, which was in fact relied upon by the learned counsel for the petitioner in Ravi Varma Vs. The Secretary, TNPSC in W.A.No.649 of 2009 [(2009) SCC Online (Mad) 1569]. The observations of the Division Bench is extracted hereunder as a reminder to the Commission.

"Before we part with this matter, we would like to express our hope that the Tamil Nadu Public Service Commission will be more careful in future while conducting the examinations. If the answers to the questions posted are to be rendered in an objective manner, the Public Service Commission should be very vigilant about the correctness of the answers. The paper setters and the examiners ought to have greater concern for the large number of candidates who give this examination and whose future career depends upon their selection. We expect the Public Service Commission to be much more thoughtful while setting papers for the future examinations to be conducted by them."

27.Unfortunately, despite the above observations of the Division Bench several years before, it appears that the Commission has not taken cue from such caution by the Court. If only the Commission has taken into consideration the observations of the Division Bench in all seriousness, it could have avoided the defects that have crept in, in the setting of questions and the identification of key answers. It appears that despite its past mistake, the Commission has handled the present important selection of Group-I Services in a cavalier fashion.

28.The Tamil Nadu Public Service Commission is a premier recruiting agency for recruitment of candidates for appointment to State Public Service. Such an agency, which is entrusted with the task of mass recruitment in various services, cannot assume its role lightly and allow mistake of the present nature to creep in, in the selection process, quite often. The credibility of the Commission would be at stake before the public at large if the mistakes are often repeated. A philosopher said that those who cannot remember the past are condemned to repeat it. The Commission, which probably did not remember its past mistakes has repeated the same in the present selection. Therefore, in public interest, the Commission must ensure that in future selection, such mistakes do not occur. It is needless to mention that by framing defective question and keys, it is possible that meritorious candidates can lose their opportunity to be selected ultimately for public service. Not that every candidate, who participated in such selection, can afford to approach this Court for legal redress. Therefore, ultimately, the responsibility lies with the Commission to ensure free and fair selection process.

In the result, the writ petition stands dismissed. No costs. Connected miscellaneous petitions are dismissed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

msk/mrm
To

1.The Secretary,
P & AR Department,
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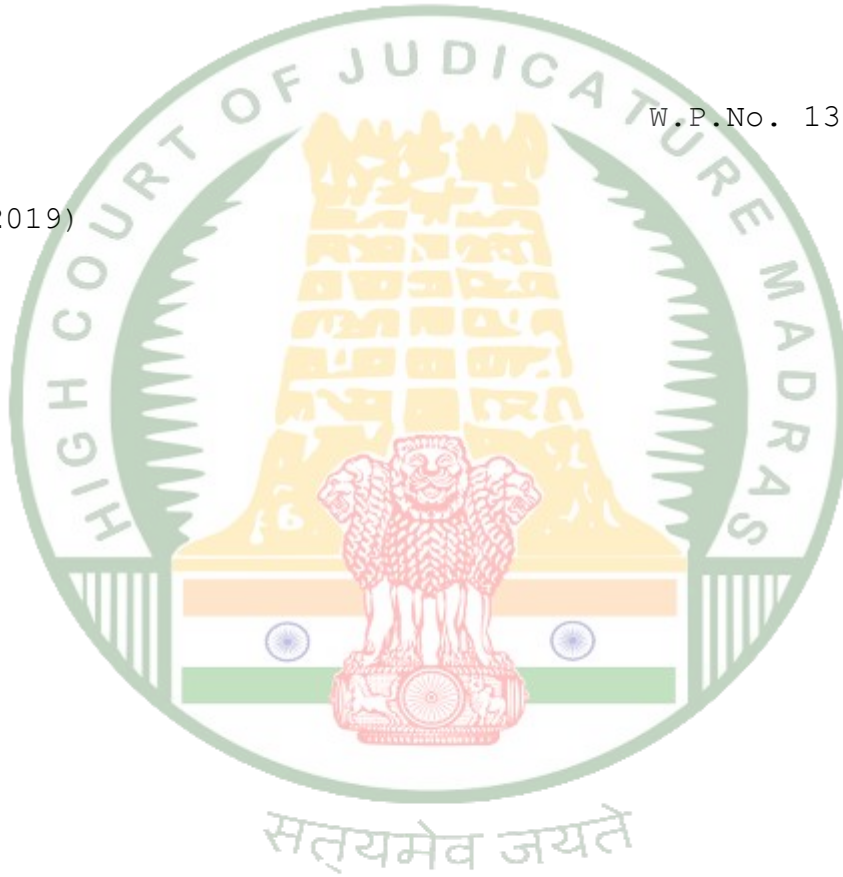
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3.The Controller of Examinations,
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+1 CC to Mr.S.S.Madhavan, Advocate sr 56828.

W.P.No. 13346 of 2019

RSV(CO)
SP(05/08/2019)



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