

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.02.2019
CORAM
THE HON'BLE MR. JUSTICE M.VENUGOPAL
AND
THE HON'BLE MR. JUSTICE SETHILKUMAR RAMAMOORTHY
W.P.No.17060 of 2018
and
WMP.Nos.20307 and 20308 of 2018

M.Amudha

... Petitioner

vs.

1.Tamil Nadu Public Service Commission
rep.by its Sub Secretary, Chennai-3.

2.The Principal District Judge, Dindigul
rep.by its Chief Administrative Officer.

3.The Registrar General,
High Court of Madras,
Chennai.

(R3 impleaded as per the order of this Court
dated 08.11.2018 made in WMP.No.30011/2018)

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in Kurippanai No.017982/PSD-B1/2015-16 dated 16.05.2018 and of the 2nd respondent in A.No.59/2018/A1/dt.25.05.2018 and to quash the same arbitrary, illegal and violation of the principles of natural justice and consequently, direct the First respondent to issue an order of an appointment cum allotment to the petitioner for the post of Steno-Typist Grade III in the existing vacancies in the Tamil Nadu Judicial Ministerial Service.

For Petitioner : Mr.Navaneethakrishnan, SC
for Mr.R.Rajamohan

For R1 : Ms.C.N.G.Niraimathi
For R2 & R3 : Mr.M.Santhanaraman

ORDER

(Order of the Court was made by M.VENUGOPAL, J.)

Heard both sides.

2. According to the Petitioner, she is a B.Com Graduate and qualified Steno-Typist. She is a married woman. Her family consists of her Husband, three Minor Children and an aged Father-in-Law and Mother-in-Law. She was appointed as temporary Steno-Typist firstly in the Judicial Magistrate Court, Thirukoilur on 28.10.2013. Later, she was transferred to the Principal Sub Court, Villupuram on 29.08.2014. She was lastly transferred to the Court of Judicial Magistrate No.I, Villupuram on 03.09.2014.

3. The version of the Petitioner is that while serving as temporary Steno-Typist in the Court of Judicial Magistrate No.I, Villupuram, she appeared for the Written Examination on 06.11.2016 for the selection to the post of Steno-Typist Grade III conducted by the First Respondent/Tamil Nadu Public Service Commission. The Counselling for the said selection, took place on 06.09.2017 at the Office of the First Respondent/Service Commission. She had successfully cleared the Examination and obtained an Order of Appointment dated 09.08.2017 and the same was issued by the First Respondent. As per the said Appointment, she was posted to the Departmental Unit viz., Steno-Typist Grade III in the Office of the Principal District Judge, Dindigul, in the Tamil Nadu Judicial Ministerial Service.

4. It comes to be known that the Petitioner received a communication dated 20.10.2017 from the Second Respondent/Principal District Judge, Dindigul to appear before him on 27.10.2017 with all the records as mentioned in the said communication. Accordingly, she appeared before the Second Respondent/Principal District Judge, Dindigul on 27.10.2017 with all the relevant records. After verification of the original documents and also on receipt of xerox copies of the records from the Petitioner by the Second Respondent, she received another communication dated 03.11.2017 from the Second Respondent requiring her to join in the service on 06.11.2017. She appeared before the Second Respondent in person and informed him that she is working as temporary Steno-Typist in the Court of Judicial Magistrate No.I, Villupuram and after relieving from the said Court, she would join the duty.

5.The Petitioner further states that while serving as temporary Steno-Typist in the Judicial Magistrate Court No.I, Villupuram, she projected an application dated 06.11.2017 to the learned Judicial Magistrate to relieve her from the post on the ground that she was selected as Steno-Typist Grade III by the First Respondent and allotted to the Second Respondent. In the meanwhile, the Second Respondent, as per his Proceedings dated 10.11.2017, ousted the Petitioner from the post of temporary Steno-Typist Grade III in the Judicial Magistrate Court No.I, Villupuram.

6.The categorical stand of the Petitioner is that she was relieved from the Judicial Magistrate Court No.I, Villupuram only with an intention to join as temporary Steno-Typist Grade III as per the selection made by the First Respondent/Service Commission. In the meanwhile, her Father-in-law's health condition was deteriorated and she has to attend on him. Furthermore, her Children's condition was also very much affected due to illness. Her appointment at Dindigul Court, which is far away from Villupuram, caused worry among the family members, especially her Children, who are all wanted her physical presence with them. Her Children cannot be dislocated to Dindigul, since their studies would be affected. Also that, she underwent severe mental stress and is very much afraid to stay lonely at Dindigul and the separation from her whole family caused her mental agony. Because of the above said situation, she is unable to lead a normal life and she was under the severe depression.

7.When that being factual situation, the Petitioner received a communication from the Second Respondent/Principal District Judge, Dindigul dated 03.03.2018 directing her to join duty within one week from the date of receipt of the said communication, failing which, her name will be recommended for removal from the 'Selection List' by the First Respondent. Because of her family situation, she submitted a Representation dated 10.05.2018 at the Office of the First Respondent and also sent the same to the Respondents 1 and 2 on the same day by Registered Posts, which were received by them. In the said Representation, she had explained her poor family situation and its dependency on her income. Only due to family circumstances, she was not able to join duty at Dindigul. She also mentioned about the letter dated 03.03.2018 of the Second Respondent in her Representation. As per the said Representation, she had requested the Respondents to appoint her in the existing vacancy of Steno-Typist Grade III at Villupuram District.

8.It transpires that the First Respondent, by its impugned order dated 16.05.2018, intimated the Petitioner that the recommendation of the Second Respondent to remove her name from the 'Selection List' was accepted and accordingly, her name was removed from the 'Selection List'. As a matter of fact, the real grievance of the Petitioner is that her request to appoint her to Villupuram District as Steno-Typist Grade III, where she worked temporarily for long time as Steno-Typist Grade III, was not considered. Her Representation, according to her, ought to have been considered independently by the First Respondent/ Service Commission, on humanitarian ground. In short, her Representation was not at all considered by the First Respondent and the order dated 16.05.2018 removing her from the 'Selection List' is hence, in negation of the Principles of Natural Justice. Apart from that, the consequential order dated 25.05.2018 passed by the Second Respondent, is clearly not sustainable in Law.

9.At this stage, the Learned Senior Counsel for the Petitioner submits that without giving personal hearing and without providing any opportunity to the Petitioner to explain her position, the Second Respondent/Principal District Judge, Dindigul arbitrarily and illegally had recommended to the First Respondent / Service Commission to remove her name from the 'Selection List'. As such, the said recommendation is not sustainable in Law and is liable to be quashed.

10.Yet another argument projected on the side of the Petitioner is that the First Respondent's appointment order did not prescribe any time limit to join the duty. Further, the Second Respondent ought not to have recommended to remove the name of the Petitioner in the 'Selection List'. That apart, the First Respondent also ought not to have accepted the said recommendation of the Second Respondent.

11.Lastly, it is the submission made by the Learned Senior Counsel for the Petitioner that due to the circumstances, which are beyond the Petitioner's control, she was not in a position to join duty and in Villupuram District, there are vacancies for the post of Steno-Typist Grade III and therefore, the genuine request of the Petitioner ought to be considered by the First Respondent.

12.In Response, it is the submission of the Learned Counsel for the First Respondent/Service Commission that the Petitioner was selected and allotted to the unit of Principal District Judge, Dindigul District, through counselling held on 06.09.2017 and the 'Provisional Selection List' containing the name and other particulars was forwarded to the Unit Office vide Commission's letter dated 11.10.2017.

13.The Learned Counsel for the First Respondent brings it to the notice of this Court that the Second Respondent/Principal District Judge, Dindigul in his reference dated 12.04.2018 had informed that out of the nine candidates allotted to Dindigul Unit, three candidates are yet to join duty (one among them is the Writ Petitioner herein) and that the Second Respondent sent a list of names recommending for Name Deletion, after due communications sent to the candidate/Petitioner to join duty, vide Court Official Memo No.9017/2017 dated 20.10.2017, Proceedings A.No.138/2017/A1 dated 03.11.2017, letter No.2195/2018 dated 03.03.2018 and Letter D.No.3533/2018 dated 12.04.2018. Added further, in spite of the above communications sent to the Petitioner to join duty, she had not even replied to the Principal District Judge, Dindigul, in which, it was categorically stated that if the Petitioner does not join duty within 7 days, her name would be deleted from the 'Provisional Selection List'.

14.The Learned Counsel for the First Respondent points out that the Petitioner was provided with sufficient opportunities by issuance of four communications as mentioned above, to join duty. In fact, she had not turned up by availing those opportunities. Hence, the Second Respondent/Principal District Judge, Dindigul had informed in his letter dated 12.04.2018 that three candidates are yet to join and recommended to delete the names of those candidates from the 'Selection List'. Indeed, the First Respondent, through its letter No.6113/PSD-B1/2017 dated 15.05.2018, being satisfied with the opportunities provided to the Petitioner, had accepted the Name Deletion Proposal received from the Unit Officer and intimated the Second Respondent/Principal District Judge, Dindigul that the name of the candidates (allotted to Dindigul Unit) including M.Amudha was removed from the 'Selection List'.

15.The Learned Counsel for the First Respondent emphatically contends that the Petitioner has no legal right to request for change of Department/Unit and that the

First Respondent/Service Commission is only a 'Recruiting Agency' and not an Authority to transfer the candidates once allotted. Furthermore, the Head of the Departments are the only appropriate authority to transfer the candidates, who are working under their control. Besides this, the case of the First Respondent is that the letter of the Petitioner dated 10.05.2018 addressed to the Second Respondent/Principal District Judge, Dindigul and the Chairman and the Secretary of the Service Commission, was received by the Office of the Service Commission only after her name was deleted and therefore, the request of the Petitioner to transfer her to other Unit, did not warrant any attention from the Service Commission.

16.The Learned Counsel for the First Respondent further points out that the Unit Officer was requested to merge the resultant vacancies in the future estimate of vacancies as ordered by the Commission and as per Section 7 (5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, the Unit Officer has recommended deleting the name of the Petitioner from the 'Selection List' and that, in continuation of the same, the First Respondent has followed the Rule for name deletion with respect to the Petitioner. Furthermore, Rule 23 of the Rules of Procedure reads as follows:

"Where a list of candidates approved for appointment to a service of post has been prepared in consultation with the Commission, the removal from such list of the name of any candidate, who has not be placed on probation shall be made in consultation with the Commission. Where the candidates selected by the Commission fails to join duty or fails to produce the requisite documents including the certificates of physical fitness or where such candidate is found to be physically not fit on production of such certificate of physical fitness or here such candidate on production of the requisite documents is found to be not qualified for appointment to the post, the Commission shall, either suo moto or on the information of the department concerned, as the case may be, delete the name of such candidates from the approved list."

As such, the First Respondent is uniformly following the aforesaid Rule without any deviation.

17.By way of Reply, the Learned Counsel for the Respondents 2 and 3 contends that the Writ Petitioner was

appointed as Steno-Typist Grade III in Judicial Magistrate Court No.I, Dindigul and she was directed to join duty on the Forenoon of 06.11.2017. However, she had not joined duty on that day. The Judicial Magistrate No.I, Dindigul had submitted a letter dated 22.11.2017 stating that the Petitioner, who was allotted by the First Respondent/Service Commission and appointed by the Second Respondent/Principal District Judge, Dindigul in his proceedings dated 03.11.2017, had not joined duty in that Court till date. Further, the Second Respondent had informed to the First Respondent/Service Commission on 11.12.2017 about the fact of joining duty and non-joining duty.

18.The Learned Counsel for the Respondents 2 and 3 points out that the First Respondent through its communication dated 19.02.2018, had instructed the Second Respondent to send a letter to the Writ Petitioner, who had not joined duty, to the effect that if she does not join duty within the stipulated time, then her name would be deleted from the 'Selection List' of the First Respondent/Service Commission and requested to send the copies of the Appointment Order, Official Memorandum and Acknowledgment Card along with the recommendation to delete her name from the 'Selection List'. Only based on the instructions given by the First Respondent/Service Commission, the Second Respondent had issued an Official Memorandum in D.No.2195/2018 dated 03.03.2018, directing the Petitioner to join duty as per the proceedings of the Second Respondent in Judicial Magistrate Court No.I, Dindigul, within 7 days, failing which, her name would be recommended for deletion from the 'Selection List' of the First Respondent/Service Commission, which was received by the Petitioner and the acknowledgment was also received by the Second Respondent Office on 08.03.2018.

19.The crystalline stand of the Respondents 2 and 3 is that even after the receipt of the said communication by the Petitioner on 03.03.2018, she had not joined duty. Subsequently, the Second Respondent had sent a letter to the First Respondent/Service Commission on 12.04.2018 along with 'Enclosures' recommending the First Respondent/Service Commission to delete the name of the Petitioner from the 'Selection List'.

20.Also that, the First Respondent /Service Commission had sent a letter dated 15.05.2018 stating that the three candidates, who had not joined duty in Judicial Department,

Dindigul District, were removed from the 'Selection List' and further instructed to intimate the concerned candidates that their names were deleted from the 'Selection List'. Accordingly, an order was issued to the Writ Petitioner including two other candidates stating that their names were removed from the 'Selection List of Steno-Typist Grade III' allotted to the Second Respondent's Court by the First Respondent/Service Commission, as per the proceedings of the Second Respondent dated 25.05.2018.

21. The Learned Counsel for the Respondents 2 and 3 further contends that in the instant case, there is no violation of any procedure nor the Principles of Natural Justice; and the Judicial Officers are in need of Steno-Typist for attending the work of Judgments, Decree, Orders, making fair copy Register etc.; and the post of Steno-typist is vital in the Judiciary. After a lapse of 8 months, the Petitioner has deliberately filed the present Writ Petition, which is devoid of merits.

22. In this connection, the Learned Counsel for the Respondents 2 and 3 refers to a letter dated 08.02.2019 of the Principal District Judge, Villupuram District addressed to the Third Respondent/Registrar General, High Court, Madras, wherein, it was mentioned that 25 posts of Steno-Typist Grade III are vacant in Villupuram District (both Civil and Criminal) as on date. Further, in a letter of the Principal District Judge, Dindigul dated 09.02.2019 addressed to the Third Respondent/Registrar General, High Court, Madras, it was mentioned that there are 14 posts of Steno-Typist Grade III kept vacant in Judicial Department, Dindigul District as on date and that, out of 14 posts, 5 Steno-typist Grade III have been appointed temporarily under Rule 16(a) and (e) of the Tamil Nadu Judicial Ministerial Services Rules.

23. As far as the present case is concerned, admittedly, the Petitioner had not joined duty in Judicial Department, Dindigul District, due to which, her name was recommended by the Second Respondent for deletion from the 'Selection List' of the First Respondent/Service Commission. Further, an order was issued to the Writ Petitioner stating that her name along with two other candidates were removed from the 'Selection List of Steno-Typist Grade III' allotted to the Second Respondent/Principal District Judge, Dindigul by the First Respondent/Service Commission, as per the proceedings dated 25.05.2018.

24. In Reply, the Learned Senior Counsel for the Petitioner adverts to Section 7 - Approved Candidates (5) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, which runs as under:

"(5) If an approved candidate selected by the Commission for appointment by direct recruitment fails to join duty ordinarily within three months from the date of receipt of the orders directing him to join duty or within an earlier date, if so specified by the appointing authority in special circumstances, he shall forfeit his right for appointment to the post and his name shall be removed from the approved list:

Provided that in special circumstances, the appointing authority may extend the time-limit referred to in this sub-section up to six months for valid reasons:

Provided further that in exceptional circumstances, if any candidate is allowed to join duty beyond the time-limit of six months, his seniority in that post shall be fixed below the junior most candidate appointed to that post in that service on the date of his joining duty."

and contends that taking into consideration of the family situation of the Petitioner, she may be provided with an Appointment to the post of 'Steno-Typist Grade III' in Villupuram District, considering the fact that there are 25 vacancies in the post of Steno-Typist Grade III in Villupuram District (both Civil and Criminal) as on 08.02.2019.

25. It is to be borne in mind that in the present case, the Petitioner had addressed a Representation dated 10.05.2018 to the Second Respondent/Principal District Judge, Dindigul and the Chairman and Secretary of the First Respondent/Service Commission, stating inter alia, that she was not able to join duty in the post of Steno-Typist Grade III at Dindigul Court. She had also mentioned therein that she belongs to a poor family and his family depends on his income as well and due to her unfavourable family circumstances, she could not join duty at Dindigul Court. Further, she had also pointed out in her Representation that while she was working as Section 10(a) (1) Employee, on temporary basis, the First Respondent/Service Commission had selected her for being posted on permanent basis to the Judiciary Department and

ultimately, made a request for posting her as Steno-Typist Grade III in a vacant post at Villupuram District Judicial Department.

26. One cannot brush aside the vital fact that the Petitioner even though was selected as 'Steno-Typist Grade III' through the First Respondent/Service Commission and stood allotted to the Dindigul District Judicial Department, she had not joined duty, as per the proceedings of the Second Respondent/Principal District Judge, Dindigul dated 03.11.2017, in the post of Steno-Typist Grade III at Judicial Magistrate Court No.I, Dindigul. Ofcourse, she has come out with a plea that she belongs to a poor family and her family depends on her income and due to unfavourable family situation, she could not join duty at Dindigul Court. Since she had not joined duty in the post of Steno-Typist Grade III, as per proceedings of the Second Respondent dated 03.11.2017, her name ultimately, came to be deleted by the First Respondent/Service Commission as per Memo dated 16.05.2018, based on the recommendation letter dated 12.04.2018 of the Second Respondent/Principal District Judge, Dindigul. Further, the Second Respondent/Principal District Judge, Dindigul through his order dated 25.05.2018, had informed the Petitioner about her name being removed from the 'Selection List of Steno-Typist Grade III' allotted to his Court, which was included in Group IV 2015-16 by the First Respondent/Service Commission.

27. In view of the above, the orders of the First Respondent/Service Commission dated 16.05.2018 and the Second Respondent/Principal District Judge, Dindigul dated 25.05.2018 are just and proper based on the facts and circumstances of the present case, which float on the surface. However, considering the present scenario that there are 25 vacancies in the post of Steno-Typist Grade III at Villupuram District (both Civil and Criminal) as on date, as per the communication dated 08.02.2019 addressed by the Principal District Judge, Villupuram District to the Third Respondent/Registrar General, High Court, Madras, this Court, taking note of the plight of the Petitioner that she belongs to a poor family and her family depends on her income and she has three minor children aged 2, 5 and 8 years respectively and also to maintain her old Father-in-Law and Mother-in-Law, directs the First Respondent/Service Commission to consider her genuine and reasonable Representation dated 10.05.2018 in a just, fair, reasonable, objective, dispassionate and unbiased manner and to include her name in the 'Selection List' for being

allotted to the post of Steno-Typist Grade III in any of the Courts in Villupuram District, within a period of six weeks from the date of receipt of copy of this order. Also that, the First Respondent/Service Commission, the Principal District Judge, Villupuram as well as the Third Respondent/Registrar General, High Court, Madras shall take further resultant follow up action in the subject matter in issue, in a diligent manner, without any further loss of time.

28. Accordingly, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1. Tamil Nadu Public Service Commission
rep. by its Sub Secretary, Chennai-3.

2. The Principal District Judge, Dindigul
rep. by its Chief Administrative Officer.

3. The Registrar General,
High Court of Madras,
Chennai.

4. The principal District Judge,
Villupuram

+2ccs to Mr. R. Rajamohan, Advocate SR.No. 18773

W.P.No.17060 of 2018

A.SK(27/02/2019)

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