

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 03.12.2019

PRONOUNCING ORDERS ON 06.12.2019

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

WP NOS.32708, 31964, 33374 OF 2019 AND
WMP NO.33125, 33126, 33834 OF 2019

P.Prabhu	Petitioner in WP No.32708 of 2019
V.Arun Kumar	Petitioner in WP No.31964 of 2019
P.Sivaraman	Petitioner in WP No.33374 of 2019

Vs.

1. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar,
Park Town, Chennai 600 003.
 .. Respondent in WP Nos.32708 & 33374 of 2019
 ..1st Respondent in WP No.31964 of 2019
2. The Commissioner,
Commercial Taxes and Registration Department,
Chepauk, Ezhilagam, Chennai - 600 005
 ..2nd respondent in WP No.31964 of 2019

Prayer in WP No.32708 of 2019:

Writ petition has been filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the respondent to interview the petitioner pursuant to his call letter dated 25.10.2019 for the posts included in Combined Civil Services Examination Group - II (Interview Posts) (Group -II Services) conducted pursuant to the Notification No.15/2018 dated 10.09.2018 and issue selection /posting orders if the petitioner secure the required marks after declaring the results with due preference, seniority and consequential monetary and other benefits which the petitioner would have got but for the illegal action of the respondent in preventing him from participating in the interview.

Prayer in WP No.31964 of 2019:

Writ petition has been filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus to direct the 1st respondent to permit the petitioner to participate in the selection process called in Notification

No.15/2018 and to permit the petitioner to rectify the mistake committed with regard to providing of information his present employment and to permit the petitioner to attend the oral test as scheduled in Memorandum number 2400/OTD-D2/2018 dated 25.10.2019 along with the other candidate on or before 30.11.2019 and to select and appoint him to the post called for. Prayer in WP No.33374 of 2019: Writ petition has been filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus to direct the respondent herein to permit me to participate in the Oral Test with respect of Group II Services 2018 (Interview Post) Registration No.260509133.

For Petitioner : Mr.N.G.R.Prasad for
in WP No.32708 of 2019 for M/s.Row and Reddy Associates

For Petitioner : Mr.V.Selvaraj
in WP No.31964 of 2019 Mr.P.Paramasivadass

For Petitioner : Mr.S.Lakshanasamy
in WP No.33374 of 2019 Mr.P.Paramasivadass

For Respondent : Selvi.C.N.Niraimathi
in WPNos.32708/19 Standing Counsel
& 33374 of 2019
and 1st respondent in
WP No.31964 of 2019
for 2nd respondent in
WP No.31964 of 2019 : Mr.M.Hariharan,
Additional Government Pleader

COMMON ORDER

The subject matter that is involved in all the three writ petitions are common and therefore, all these three writ petitions are dealt together through this common judgement.

2. The Tamil Nadu Public Service Commission by its Notification dated 10.08.2018, had invited applications for direct recruitment to the posts included in CSSE - I, 2018 against 1338 vacancies. All the writ petitioners are Government Employees. The writ petitioner in WP No.31964 of 2019 is already working as a Assistant in the Commercial Tax and Registration Department. The writ petitioner in WP No.32708 of 2019 is working as a Village Administrative Officer in the office of the Revenue Divisional Officer, Ponneri. The writ petitioner in WP No.33374 of 2019, is working as a Village Administrative Officer in the Sub-Collector's Office, Thoothukudi.

3. The Notification itself permitted a candidate who is already in Government services to participate in the selection. There was also no requirement to apply through proper channel for a Government servant and they can directly apply through on-line in the selection process.

4. The application form specifically contained a column seeking for detail as to whether the candidate is a Government employee. If the candidate mentions the option as "yes", the related windows will automatically open seeking for various details. If the candidate gives his option as "No", the related options will not open.

5. In the present case, all the three writ petitioners, who are Government Employees had answered as "No" against the column "Are you a Government Employee". The petitioners had cleared the preliminary exam and were called for the main examination and they had also submitted the No objection certificate from the appointing authority for the purpose of participating in the selection process. All the three writ petitioners were disqualified and were not allowed to participate in the interview on the ground that they had suppressed the information that they are Government employees.

6. The learned counsel appearing for the respective petitioners submitted that they had inadvertently mentioned as "No" in the on-line application form against the column "Are you a Government Employee". The learned counsel submitted that this cannot be construed to be a suppression and by providing such a information, no undue advantage was gained by the petitioners. The learned counsel further submitted that ultimately, they have submitted the No objection certificate from the appointing authority and that itself shows that the petitioners did not intend to suppress their status as a Government Employee. The learned counsel further submitted that the mistakes which are committed inadvertently while applying on-line, can be condoned and ultimately, the test is as to whether the petitioners have mislead the respondent or they have gained any unfair advantage.

7. The learned counsel for the petitioners in order to substantiate their submissions relied upon the following judgements :-

(a) [Rohit Yadav Vs. The Central Board of Secondary Education and others] in WP.(C) No.4189 of 2012.

(b) [P.Nethaji Subash Chandra Bose Vs. The Tamil Nadu Public Service Commission, rep. by its Secretary, and another] in WP (MD) No.20394 of 2017.

(c) [National Institute of Fashion Technology, rep.by its Director General NIFT Campus, New Delhi Vs. V.S.Jayya Vishrant] reported in 2017(7) MLJ 714

(d) [P.T.Satheeskumar Vs. The Tamil Nadu Public Service Commission, rep. by its Secretary, Chennai and others] reported in 2015 LIC 3386.

(e) [M.Vidhya Vs. The Secretary, Tamil Nadu Public Service Commission, rep. by its Secretary, Chennai] in WP No.3766 of 2018.

(e) [M.Thanga Bavithra Vs. The Tamil Nadu Public Service Commission, rep. by its Secretary, Chennai] in WP (MD) No.3212 of 2018.

(f) [T.Amuthini Vs. The Secretary, Tamil Nadu Public Service Commission, rep. by its Secretary, Chennai] in WP No.2031 of 2018.

8. Per contra, Selvi.Niraimathi, learned Standing counsel appearing for the Tamil Nadu Public Service Commission submitted that paragraph 15 of the instructions to the applicants specifically provided that a Government employee can directly apply only after duly informing their employer in writing and they must also obtain no objection certificate and produce the same at the time of attending the certificate verification. The learned counsel further brought to the notice of this Court paragraph 19 of the instructions which provides for disqualification / debarment. The learned counsel by adverting to this clause submitted that suppression of material information regarding employment in Government is a ground for disqualification / debarment. The learned counsel also submitted that the Notification dated 10.08.2018, issued for this post specifically provided at para 13 (g) that if any of the claims are found to be incorrect, it will lead to rejection of the candidature and also will result in suitable penal action.

9. The learned Standing counsel further submitted that if the petitioners had opted for "yes" towards the column "Are you a Government employee", the related windows will open seeking for various particulars and this will ultimately decide the eligibility of the candidate. By opting for "No", the petitioners have intentionally suppressed the material facts and therefore, they have to suffer for the consequences.

10. The learned Standing Counsel in order to substantiate her submissions relied upon the following judgements :-

(a) [Dr.M.Vennila Vs. The Tamil Nadu Public Service Commission (represented by Deputy Secretary), Chennai and others] reported in 2006 (3) L.L.N.437

(b) [M.Sudha Parameswari Vs. The Joint Secretary, Tamil

Nadu Public Service Commission, Chennai and another] in WP.(MD) No.22089 of 2016.

(c) [The State of Tamil Nadu and others Vs.G.Hemalatha and another] in Civil Appeal No.6669 of 201.

11. This Court has carefully considered the submissions made on either side and the materials available on record.

12. It is an admitted case that all the three writ petitioners are Government Employees and all of them had mentioned in the on-line application as "No" against the column "Are you a Government employee". It is true that all the three writ petitioners had produced the no objection certificate at a later point of time from their respective appointing authorities. The primary ground that has been raised by all the three writ petitioners is that it was an inadvertent mistake while filling up the on-line application form and the petitioners had no intention to mis-lead the Tamil Nadu Public Service Commission and they did not gain any unfair advantage. In order to establish their genuineness, all the three writ petitioners also produced the no objection certificate from their appointing authority.

13. In the judgments that have been cited by the learned counsel appearing for the respective petitioners and which has been mentioned supra, it has been consistently held that inadvertent mistake can be condoned where it was not intended to get any unfair advantage. In all those cases, this Court had taken the facts of each case and had found that the mistakes were inadvertent and no unfair advantage has been taken by the candidate and that the candidate had no intention to mislead the respondent therein.

14. At the first blush, it looks as if the present case can also be brought within the ambit of the judgements cited by the learned counsel appearing on behalf of the respective petitioners. However, the judgements cited by the learned Standing Counsel requires a deeper consideration before coming to any final conclusion in this case.

15. In the model application that was given to this Court, it is seen that if the petitioners had answered as "Yes" towards the question "Are you a Government Employee", the following windows would have opened and the same is extracted hereunder :-

Name of the Department	
Designation	

Name of the Department	
Date of joining in service	
Have you intimated the Head of the Department about applying for this Exam in writing?	
Designation	
If "yes" to whom (Designation) and Date	
Departmental Disciplinary action initiated	

16. According to the learned Standing counsel appearing on behalf of Tamil Nadu Public Service Commission, the answers provided for the above options will have an impact when the eligibility is determined by the Tamil Nadu Public Service Commission towards the selection of the candidate.

17. The next question is, even assuming that the petitioners have inadvertently given the option as "No", can the same can be condoned by Tamil Nadu Public Service Commission at a later point of time and the candidature of the petitioners can be processed further. At this juncture, the judgments cited by the learned Standing counsel for Tamil Nadu Public Service Commission assumes significance. The Division Bench of this Court in [Dr.M.Vennila Vs. The Tamil Nadu Public Service Commission (represented by Deputy Secretary), Chennai and others] reported in 2006 (3) L.L.N.437 has considered the effect of mistakes /errors while filling an on-line application. The relevant portion of the Judgment is extracted hereunder :-

16. Now, let us consider whether the requirements as stated in the Notification/Information Brochure are to be strictly complied with or not and in other words, whether they are mandatory?

17. Learned counsel appearing for the petitioners referred to two decisions of the Supreme Court, viz., (i) M/s. G.J. Fernandez vs. State of Karnataka (AIR 1990 S.C. 958); and (ii) M/s. Poddar Steel Corporation vs. M/s. Ganesh Engineering Works (AIR 1991 S.C. 1579) and contended that failure to sign below the Column-24 and below the declaration column is curable. In view of the above submission, we verified the factual position in the above referred to decisions. It is not in dispute that both the decisions relate to submission of Tender Forms. On going through the

factual details and the ratio laid down therein, in view of the specific details furnished in the Information Brochure and Notification issued by the Tamil Nadu Public Service Commission, we are satisfied that the same are not helpful to the petitioners. As a matter of fact, in the latter decision, viz., AIR 1991 SC 157 9 (cited supra), the defect that was pointed out by the Government Agency was that though the earnest money under the terms of tender notice was permitted to be deposited only by cash or by demand draft drawn on the State Bank of India, the payment of earnest money was sent by way of certified cheque of Union Bank of India and in that situation, the Supreme Court after pointing out that the payment of earnest money by certified cheque of Union Bank of India, drawn on its own Branch could be treated as sufficient compliance of the terms. Their Lordships have also held that it could not be said that the authority inviting the tenders could not waive the literal compliance of such a condition and accept the tender especially when it was in its interest not to reject the bid which was the highest. In our case, in all these writ petitions, the petitioners have not signed the applications, some in two places and others below the declaration. In such circumstances, as said earlier, the decisions relied on by the learned counsel for the petitioners are not helpful to their stand.

18. The learned counsel for the petitioners referred to the decision of a learned single Judge of this court in the case of G. Packkiaraj vs. The Secretary, Tamil Nadu Public Service Commission, Government Estate, Chennai-2 and another (2006 (2) TNLJ 52 (Civil)). It is a writ petition relating to rejection of an application of the petitioner, G.Packkiaraj, who applied for the post of Assistant Public Prosecutor Grade-II. The application was rejected, since he did not sign the application. According to the petitioner, he did sign at the bottom of the application as well as Column 15 where the applicant has to affix his photograph and sign underneath the photograph. But in the application form, there is one other place, i.e. at the end of Column 24 where the signature of the applicant was required to be made. In that particular column, the petitioner failed to put his signature. It was on that ground, the application of the petitioner came to be rejected inasmuch as, as per the instructions issued to the candidates, applications which are not signed would be summarily rejected. It

was contended before the learned Judge that the petitioner was totally misled by the application which was issued in a single sheet, which required the signature of the applicant in more than one place and when it required the signature of the applicant at the end of the application form, which was just below the "Declaration part", the nonsigning by the petitioner below the column-24 was not deliberate and was only due to inadvertence and therefore, the meritorious claim of the applicant should not be thrown out on account of such minuscule mistake. On behalf of the Commission, very same objection was raised, viz., that the Instructions to the Candidates were specific to the effect that the applications without signature would be summarily rejected. It was informed before the learned Judge that the petitioner was permitted to write the examinations as a special case, subject to the outcome of the writ petition. It was further informed before the learned Judge that the petitioner was successful in the written examinations and also attended viva-voce test and the respondents found that he secured the required minimum marks for attending the oral test. His result was kept in a sealed cover and the same was opened before the learned Judge who noted that the petitioner secured 216.50 marks in the written test out of 400 and in the o r a l test he secured 30 out of 60 marks and in all, the petitioner secured 246.50 marks. In the circumstances, the learned Judge came to the conclusion that the petitioner is a meritorious candidate, that too belonging to Scheduled Caste and arrived at a conclusion that "minuscule mistake committed by the petitioner should not loom large in order to deprive of his very valuable right." It is not in dispute that there also the notification of the Commission made it clear that all columns are to be filled up and the applicants are to sign at all the places indicated therein. In spite of the specific instructions, the petitioner therein has not signed at a place where he has to sign in the application form. The academic excellence of the petitioner might have influenced the mind of the learned Judge to out-waive his mistake in not filling up the relevant column. However, the conditions stated in the Notification as well as in Information Brochure are not only mandatory and also binding on the candidates as well as the Commission/State Government. We will give our reasons as to the mandatory nature in the latter paragraphs. We have already mentioned that the petitioner therein was not only successful in written test but also in

vivo-voce and secured pass mark and he belongs to Scheduled Caste, and therefore, the learned Judge issued a direction to the Commission to entertain his application and issued further direction to declare him as successful in the examinations. We are unable to accept the view expressed by the learned Judge. In view of the academic excellence and of the fact that the petitioner was successful in the written examination as well as in vivo-voce, the conclusion arrived at by the learned Judge should be confined to the case before him and the same cannot be cited as a precedent for other cases. In fact, in respect of rejection of the applications applied for the very same post of Assistant Surgeon, another learned Judge by orders dated 05.10.2005 and 07.10.2005, dismissed Writ Petition Nos.32270 and 32548 of 2005 respectively. Though the orders of the learned Judge are very brief, we are in agreement with the conclusion arrived at by him.

19. The principle that the prospectus is binding on all persons concerned has been laid by the Supreme Court in Punjab Engineering College, Chandigarh vs. Sanjay Gulati (AIR 1983 SC 580 = 1983 (96) LW 172 S.N.). Following the same, a Division Bench of this Court has also observed in Rathnaswamy, Dr. A. Vs. Director of Medical Education (1986 WLR 207) that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same view is also taken by another Division Bench of this Court in Nithiyan P. and S.P. Prasanna vs. State of Tamil Nadu (1994 WLR 624). The same principle is reiterated in the case of Dr. M. Ashiq Nihmathullah vs. The Government of Tamil Nadu and others reported in 2005 WLR 697. It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission.

20. Learned Advocate General relied on the following two decisions of the Supreme Court, (i) W.B. State Electricity Board vs. Patel Engineering Co. (2001 (2) SCC 451); and (ii) Rajsekhar Gogoi vs. State of Assam (2001 (6) SCC

46) in support of his stand. It is true that both the decisions relate to Government contracts and submission of tenders. The following observation made in 2001 (2) SCC 451 (cited supra) is relevant.

"23. The mistakes/errors in question, it is stated,

are unintentional and occurred due to the fault of computer termed as "a repetitive systematic computer typographical transmission failure". It is difficult to accept this contention. A mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of respondents 1 to 4 to correct the same before submission of the bid. Had they been vigilant in checking the bid documents before their submission, the mistakes would have been avoided. Further, correction of such mistakes after one-and-a-half months of opening of the bids will also be violative of clauses 24.1, 24.3 and 29.1 of the ITB."

In para 31 their Lordships have held, "31. ?. It is equally in public interest to adhere to the rules and conditions subject to which bids are invited. ??"

After laying down the law, though the bid of respondents 1 to 4 therein is the lowest of bids offered, in view of the fact that there is inconsistency between the particulars given in the annexure and the total bid amount, their Lordships refused to issue direction to consider their bid along with the other bids. It is clear that though bid of the respondents 1 to 4 therein is less by 40 crores and 80 crores than that of respondents 11 and 10 respectively, in view of the defect in complying with the conditions, the Supreme Court refused to issue direction for acceptance of the lowest bid of respondents 1 to 4. In other words, it makes it clear that it is in public interest to adhere to rules and conditions and there cannot be any laxity in compliance of the same.

21. In the second decision, viz., 2001 (6) SCC 46 (cited supra), though it also relates to submission of tenders, the principle laid down is helpful to the stand taken by the Tamil Nadu Public Service Commission. The respondent No.4, in respect of column whether the tenderer is capable of financing his business himself, namely, details of source, cash in hand, bank balance, security, assets etc., has made a bald statement that she would receive financial assistance from her father and also from her sister and sister's husband. No documents or even affidavits or any other particulars were furnished along with the tender which she submitted. There is no indication as to whether she had any cash in hand or bank balance. In the absence of specific materials regarding finance, nature of business, cash in hand, bank

balance, security, assets, etc., the Supreme Court has concluded that the need for furnishing particulars in the tender form obviously is to enable the authorities concerned to scrutinize the tender to determine financial capability of the tenderer. Taking note of Clause 10 of the Tender conditions (which is imperative), their Lordships have concluded that, "10. This clearly shows that it was imperative for a tenderer to furnish full information as required so that the same could be verified by the Deputy Commissioner or any other authorized person "before settlement of shop to the tenderer" (emphasis added). In the present case, such an opportunity was clearly denied to the authorities when respondent 4 had not furnished the requisite particulars along with her tender.

11. We are therefore, of the opinion that as the tender itself of respondent 4 was liable to be rejected because of lack of particulars as stated hereinabove, no further question arises. ? "

It is clear from the above decisions that it is imperative for either a candidate or a tenderer or a person concerned to furnish full information as required in order to verify the same by the authority concerned. In the case on hand though particulars have been furnished, as pointed out earlier, in the absence of proper authentication by the persons concerned by affixing their signatures, their applications are liable to be rejected.

22. Learned Advocate General has also placed reliance on the Full Bench decision of Punjab and Haryana High Court in the case of Indu Gupta vs. Director, Sports Pubjab, Chandigarh reported in AIR 1999 Punjab and Haryana 319 (FB). In the case before the Full Bench, the petitioner applied for admission to B.Tech. course. She claimed the benefit of reservation under sports category. She could not get the gradation certificate countersigned by the Director of Sports, Punjab, and so she was not considered for admission under reserved category for sports personnel. The argument advanced by the counsel representing the petitioner is that gradation certificate, based on her performance in the sports meet is only evidencing the existence of fact entitling her to the benefit of reservation and so the condition that gradation certificate should be sent along with the application form for admission is only a formality and candidate may produce the gradation certificate at the time of admission. In support of the contention, the

petitioner relied on the observation made by a learned single Judge in Civil Writ Petition No.11787 of 1995 decided on September 8, 1995 and the reasons given by the learned single Judge were approved by a Division Bench in L.P.A. filed against that judgment by the Punjabi University, Patiala. However, in Civil Writ Petition Nos.9211 of 1997 decided on August 26, 1997, and 12093 of 1997 decided on August 28, 1997, the other Division Benches took the view that application for admission should have been enclosed with a copy of the gradation certificate and that the candidate who produced the gradation certificate after the submission of the application is not entitled to the benefit of reservation as a sport person. In view of the divergent view, the matter was referred to Full Bench for consideration. It is seen from the factual details presented before the Full Bench that admission in the participating institutions of Punjab Technical University, Jalandhar has to be made as per the terms and conditions contained in the admission brochure/application form issued for the year 1997. In the application form it was specifically stated that all particulars required must be filled in and attested photo copies of the certificates in support of the claim made by the candidates must be attached with the application form. Clause 3.8 makes it clear that the application complete in all respects should reach the Co-ordinator CET-1997, Punjab Technical University, Jalandhar by 5.00 p.m. on June 25, 1997. It is also specifically stated that the application not submitted in the prescribed application form or not filled by the candidate's own handwriting or not supported by attested photocopies of the documents or incomplete application in any other manner or received after the due date/time will be rejected. The above mentioned terms and conditions contained in the brochure have been issued by Notification of the Punjab Government dated 30th January, 1997. The terms and conditions regarding eligibility, reservation, allocation of seats, gradation certificate, and public declaration are binding on the candidates as well as the party issuing the said brochure for the period in question. In para 9, their Lordships by referring the earlier Full Bench decision in the case of Raj Singh vs. Maharshi Dayanand University (1994 (4) Recent Services Judgments, 289), disapproved the liberal construction of the terms and conditions of the brochure and specified the need for their strict adherence to avoid unnecessary prejudice to the candidates or the authority during the course of

admission. In the same paragraph, by referring the Division Bench decision in the case of Madhika Khurana (minor) vs. M.D. University in Civil Writ Petition No.15367 of 1991, their Lordships observed that the students seeking admission to the professional courses are even otherwise matured enough and supposed to understand the full implication of filling the admission form and compliance with the instructions contained in the brochure. In paragraph 10 their Lordships noticed another Full Bench decision (Rahul Prabhakar vs. Punjab Technical University, Jalandhar (1997 (3) RSJ 475: AIR 1998 Punj & Har. 18), wherein it is stated that, "A Full Bench of this Court in Amardeep Singh Sahota vs. State of Punjab (1993 (4) Serv LR 673) had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In Raj Singh vs. Maharshi Dayanand University (1994 (4) R.S.J. 289) another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur vs. Punjab University (1996 (1) RSJ 1: AIR 1996 Punj & Har 109) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP.No.6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the co-ordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the

provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected."

23. Regarding the effect of Information Brochure, the Full Bench has concluded that, "11. The cumulative effect of the above well enunciated principles of law, is that the terms and conditions of the brochure where they used pre-emptory language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an individual in such matters, to waive or dilute the stipulated conditions of the brochure would per se introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and conditions of the brochure, more particularly, where the cut off date itself has been provided in the brochure. The brochure has the force of law. Submission of applications complete in all respects is a sine qua non to the valid acceptance and consideration of an application for allotment of seats in accordance with the terms prescribed in the brochure. "

"13. ?.. Repeated affirmation of the principle by different Full Benches of this Court while relying upon the judgments of the Hon'ble Apex Court, unambiguously contains the dictum that the brochure declared before the entrance test has the force of law, strict adherence to its terms and conditions is of paramount consideration and terms and conditions including the cut off date cannot be relaxed unless such power is specifically provided to a given authority by use of unambiguous language. ? "

Finally, their Lordships have concluded, "16. In view of the above discussion the only unassailable and veritable view is that a candidate to such entrance test, in view of the terms and conditions of the brochure, afore-referred, is obliged to submit all the certificates required to annex along with the application and submit the same complete in all respects before the cut off date. In default thereto, no obligation is imposed upon the authorities concerned to entertain such application or to grant seat to that candidate."

24. We have already referred to various terms and conditions mentioned in the application form prescribed by Punjab Technical University, Jalandhar, which are similar to Clause 17 of Instruction to Candidates, etc., and Information Brochure issued by the Tamil Nadu Public Service Commission. It has been repeatedly affirmed by almost all the Full Benches of the Punjab and Haryana High Court that the Information Brochure has the force of law and has to be strictly complied with. We are in respectful agreement with the said view.

25. In the earlier part of our order, we have extracted relevant provision, viz., Instructions, etc. to Candidates as well as the Information Brochure of the Tamil Nadu Public Service Commission, we hold that the terms and conditions of Instructions, etc. to Candidates and Information Brochure have the force of law and have to be strictly complied with. We are also of the view that no modification / relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India and application filed in violation of the Instructions, etc. to Candidates and the terms of the Information Brochure is liable to be rejected. We are also of the view that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language. As said at the beginning of our order, since similar violations are happening in the cases relating to admission of students to various courses, we have dealt with the issue exhaustively. We make it clear that the above principles are applicable not only to applications calling for employment, but also to the cases relating to the admission of students to various courses. We are constrained to make this observation to prevent avoidable prejudice to other applicants at large.

18. The next judgment that has to be taken into consideration is the judgment of another Division Bench in [M.Sudha Parameswari Vs. The Joint Secretary, Tamil Nadu Public Service Commission, Chennai and another] in WP.(MD) No.22089 of 2016. In that case also, the candidate failed to disclose that she was a Government employee. The relevant portions of the judgment is extracted hereunder :-

2. The facts leading to the filing of the writ petition are as follows: 2.1. The petitioner participated in the selection for Group-IV Services

for the year 2013-2014 and was selected to the post of Steno-Typist Grade-III and allotted to the Judicial Department and she joined duty in the Fast Track Mahila Court, Thoothukudi, on 17.10.2014. She was later transferred and posted to the District Munsif Court, Tiruchendur. Prior to being selected as Steno-Typist, the petitioner had applied for selection to Group-IIA Services for the year 2013-14. Based on her application, TNPSC called upon the petitioner for certificate verification on 18.08.2015 and counselling on 13.10.2015. However, she did not reach the zone of selection due to non-availability of vacancy in the said recruitment. The petitioner also applied for recruitments to Group-IIA for the year 2014-15 and 2015-16, Examination conducted on 18.10.2015 and the Examination for the post of Village Administrative Officer on 23.11.2015. Though at the relevant time, the petitioner was in Government service, she failed to disclose the same in her applications, dated 18.10.2015 and 23.11.2015, which were submitted online. The Tamil Nadu Public Service Commission came to know about the details of the petitioner's employment as Steno Typist Grade-III only after a communication was sent by the District Munsif, Tiruchendur, through the Principal District Judge, Thoothukudi, vide letter, dated 28.04.2016.

2.2. In terms of the rules of TNPSC, if a candidate is in Government service, the same has to be disclosed and a No Objection Certificate is required to be produced from the employer. The petitioner failed to comply with the said rule in both the recruitments. Owing to this, a show-cause notice, dated 01.06.2016, was issued to the petitioner calling upon her to explain as to why she should not be debarred from appearing for examinations and selections held by the Commission and why her application to the post of Group-IIA for the year 2013-14 recruitment should not be cancelled.

12. The above rules and instructions clearly reveal that production of no objection certificate from the employer is mandatory. The pre-requisite for obtaining no objection certificate is prior intimation to the employer. In the instant case, the petitioner failed to inform her employer, rather she availed casual leave on personal affairs and attended the certificate verification and counselling. This conduct of the petitioner is clearly in contravention to the rules of TNPSC and the instructions referred above. The explanation given by the petitioner is not well

founded. It is to be noted that the petitioner has applied for a public employment and in such cases, she is bound to be true and honest and make full disclosure. In the instant case, the petitioner failed to do so, which amounts to willful suppression of material facts.

13. It may be one thing to state that the petitioner out of her zeal and enthusiasm and with a view to have career progression had applied for the post. However, she has forgotten one important fact that she is a Government servant and the post to which she had applied is also for the post in Government service. Thus, a Government servant at the very inception of her career having suppressed material information cannot be granted any indulgence. The justification now sought to be made is a clear afterthought.

19. The next judgment that has to be taken into consideration is the judgment of the Hon'ble Supreme Court in [The State of Tamil Nadu and others Vs.G.Hemalatha and another] in Civil Appeal No.6669 of 2019 dated 28.08.2019. The relevant portions in the judgement is extracted hereunder :-

7. We have given our anxious consideration to the submissions made by the learned Senior Counsel for the Respondent. The Instructions issued by the Commission are mandatory, having the force of law and they have to be strictly complied with. Strict adherence to the terms and conditions of the Instructions is of paramount importance. The High Court in exercise of powers under Article 226 of the Constitution cannot modify/relax the Instructions issued by the Commission1.

8. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in Taherakhatoon (D) By LRs v. Salambin Mohammad2 and Chandra Singh and Others v. State of Rajasthan and Another3 in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.

9. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the

Instructions. It cannot be said *M. Vennila v. Tamil Nadu Public Service Commission*, (2006) 3 Mad. LJ 376 (1999) 2 SCC 635 (2003) 6 SCC 545 that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

10. In her persuasive appeal, Ms. Mohana sought to persuade us to dismiss the appeal which would enable the Respondent to compete in the selection to the post of Civil Judge. It is a well-known adage that, hard cases make bad law. In *Umesh Chandra Shukla v. Union of India*⁴, Venkataramiah, J., held that:

"13... exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court had no such power under the Rules.

"Extreme cases often test the bounds of established legal principles. There is a cost to yielding to the desire to correct the extreme case, rather than adhering to the legal principle. That cost has been demonstrated so often that it is captured in a legal aphorism: "Hard cases make bad law."

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us.

20. It is clear from the above judgement that the rules and instructions in the application will have to be strictly complied with and this Court cannot exercise its jurisdiction under Article 226 of Constitution of India and modify or relax the terms and conditions. It has also been held that even if the mistakes are unintentional, it has to end up with the consequences that are provided in the application itself. In the

present case, para 13(g) of the Notification dated 10.08.2018, clearly provides that if the claims are found to be incorrect, it will lead to rejection of the candidature. It is also provided in the paragraph 19 of the notification that suppression of material information regarding employment in Government, will lead to disqualification.

21. In the present case, it is not as if the petitioners are illiterate or unemployed. All the petitioners are Government employees. As held by the Hon'ble Division Bench, a Government Employee is applying for the post with zeal and enthusiasm for career progression and while doing so, the applicants ought to have been careful while filling up the on-line application. This is more so in this case, since had the petitioners opted for "yes", the other related windows would have opened and the petitioners ought to have answered those questions also. By opting for "No", the petitioners have failed to furnish certain particulars which may have had an impact on their eligibility at the time of selection. We are moving towards an era of on-line registrations and on-line applications and therefore, it is important that a candidate carefully fills up the application by giving the relevant details, failing which, the candidate has to necessarily suffer the consequences. In the judgment in [The State of Tamil Nadu and others Vs.G.Hemalatha and another] referred supra, the Hon'ble Supreme Court has categorically held that strict adherence to the terms and conditions of the instructions is of paramount importance and this Court cannot modify / relax the instructions issued by the Tamil Nadu Public Service Commission. That is the reason why the Hon'ble Supreme Court used the famous legal aphorism "hard cases make bad law".

22. In the result, this Court is not convinced to grant the relief that has been sought for by the petitioners and this Court does not find any illegality or perversity in the decision taken by the Tamil Nadu Public Service Commission to reject the candidature of the petitioners. As a consequence, all the above writ petitions are dismissed. No costs. Consequently, all the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, VOC Nagar,
Park Town, Chennai 600 003.
2. The Commissioner,
Commercial Taxes and Registration Department,
Chepauk, Ezhilagam, Chennai - 600 005.

+1cc to M/s.Row and Reddy Associates, Advocate, S.R.No.102159
+1cc to Mr.V.Selvaraj, Advocate, S.R.No.101836
+1cc to Mr.S.Lakshanasamy, Advocate, S.R.No.102384
+1cc to the Special Government Pleader(T), S.R.No.101807 & 102643

WP.Nos.32708, 31964, 33374 of 2019 and
WMP No.33125, 33126, 33834 of 2019

NRL(CO)
CS/17/12/2019