

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2020

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.NO.18476 OF 2015

Tamil Nadu Public Service Commission,
Rep. by Secretary,
Frazer Bridge Road,
V.O.C. Nagar, Chennai-600 003.

... Petitioner

-vs-

1. The Tamilnadu Information Commission,
No.2, Thiyagaraya Road,
Rep. by the Assistant Registrar,
Teynampet, Chennai-600 018.
2. S. Senthilkumar
7/3CPWD Quarters,
Anna Nagar West,
Chennai-600 040.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in Case No.49395/SCIC/2013 dated 11.04.2014 of the First Respondent and quash the same.

For Petitioner : Dr.M.Devendiran

For Respondents: Mr.Niranjan Rajagopalan,
Standing Counsel (for R1)

: Notice Served (for R2)

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O R D E R
(through video conference)

Heard Dr.M.Devendiran, Learned Counsel for the Petitioner and Mr.Niranjan Rajagopalan, Learned Standing Counsel appearing for the First Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Second Respondent, who was an unsuccessful candidate in the Group - I Services Examination held by the Petitioner in 2006 - 2007, made an application dated 21.03.2013 under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act' for short) to the Public Information Officer of the Petitioner requiring the following information:-

- (1) Perusal of his original answer papers and mark statement.
- (2) Copy of all the pages of his answer papers.
- (3) Key answer for the subject General Studies - Paper I & II.
- (4) Marks awarded by the experts in the 1st and 2nd valuation of his answer papers.
- (5) Cut-off marks for all the categories.
- (6) The number of vacancies filled up so far from the total number of 172 vacancies.
- (7) The number of remaining vacancies unfilled in each posts with communal category.

Since the Second Respondent did not receive the required information despite the lapse of 35 days, he had filed a First Appeal dated 30.04.2013 before the Joint Secretary of the Petitioner, who is the Appellate Authority, in terms of Section 19(1) of the Act. Thereafter the Public Information Officer of the Petitioner by Memo No. 2571/RID-1/2013 dated 04.09.2013 sent reply to the Petitioner stating as follows:-

"Reply to Question Nos. (1), (2) & (4):

The Petitioner himself has filed an SLP before the Hon'ble Supreme Court of India, New Delhi in SLP.No.36739/2009 and the same is pending before the Hon'ble Supreme Court of India. Hence, the answer sheets and other information as requested by the Petitioner cannot be supplied at this juncture, since the matter is subjudice before the Hon'ble Supreme Court of India, New Delhi. Further, this particular examination has been squarely challenged by the Petitioner Thiru.S.Senthil Kumar and hence, the perusal of answer sheets and other information sought for by him cannot be divulged to him at present.

Reply to Question No. (3):

In respect of Descriptive Type examination conducted by the Commission, the answer keys furnished by the subject experts will be in points which cannot be considered as full answer keys. Hence, the answer keys for Descriptive type examination cannot be provided to the information seeker.

Reply to Question No. (5):

The Cut-off marks for all the categories have been furnished in the Annexure.

Reply to Question No. (6):

All the 172 Vacancies have been filled up.

Reply to Question No. (7):

All the notified vacancies have been filled up except one vacancy i.e., the result of a MBC/DC candidate has been withheld.

3. As the Second Respondent was not satisfied with the aforesaid reply furnished to him in respect of Question Nos. (1) to (4), he had preferred the Second Appeal dated 23.10.2013 under Section 19(3) of the Act before the First Respondent who had by an elaborate Order No. 49395/SCIC/2013 dated 05.03.2014 following the dictum laid down by the Hon'ble Supreme Court of India in Central Board of Secondary Education -vs- Aditya Bandopadhyay [(2011) 8 SCC 497], had directed that the information sought in Question Nos. 1 to 4 by the Second Respondent in his application has to be furnished within a period of 10 days from the date of receipt of that order. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the said order.

4. The contention of the Petitioner is that since the case in S.L.P. No. 36739 of 2009 filed by the Second Respondent against the Petitioner before the Hon'ble Supreme Court of India was sub judice, the information sought in Question Nos. (1), (2) and (4) could not be divulged to him. Insofar as Question No. (3) is concerned, it is the case of the Petitioner that the answer keys for descriptive type examination would be in points furnished by the subject experts, which cannot be considered as full answers. The said pleas raised by the Petitioner cannot be countenanced, as rightly held by the First Respondent in the impugned order.

5. It is not shown by the Petitioner that the Hon'ble Supreme Court of India had by any interim order interdicted the Petitioner during the pendency of the aforesaid case from furnishing the information that has been sought by the Second Respondent. Such information sought also cannot be said to be falling under any of the categories of exemption in Section 8 of the Act. When the information sought relates to the information relating to the Second Respondent himself, he cannot obviously be a third party seeking 'personal information' within the meaning of Section 8(1)(j) of the Act. The question as to whether the answer paper of an candidate in an examination is information exempted under the Act, had come up for consideration before the Hon'ble Supreme Court of India in Central Board of Secondary Education -vs- Aditya Bandopadhyay [(2011) 8 SCC 497], where it has been ruled as follows:-

"47. When an examinee is permitted to examine an answer book or obtain a certified copy, the examining body is not really giving him some information which is held by it in trust or confidence, but is only giving him an opportunity to read what he had written at the time of examination or to have a copy of his answers. Therefore, in furnishing the copy of an answer book, there is no question of breach of confidentiality, privacy, secrecy or trust. The real issue, therefore, is not in regard to the answer book but in regard to the marks awarded on the evaluation of the answer book. Even here the total marks given to the examinee in regard to his answer book are already declared and known to the examinee. What the examinee actually wants to know is the break-up of marks given to him, that is, how many marks were given by the examiner to each of his answers so that he can assess how his performance has been evaluated and whether the evaluation is proper as per his hopes and expectations. Therefore, the test for finding out whether the information is exempted or not, is not in regard to the answer book but in regard to the evaluation by the examiner."

It is beyond cavil that recruitment by the selecting authority for public employment is a matter which requires the highest level of transparency for assessing the inter se merit of the competing candidates in order to ward off any doubt or suspicion in carrying out that solemn process. Viewed from this perspective, the Second Respondent is entitled to know from his answer papers viz-a-viz the key answers as to whether marks have been correctly awarded to him and the assessment of his merit has been justified, which has direct relationship to public activity and public interest. As such, there does not appear to be any infirmity in the decision-making process of the First

Respondent requiring interference of this Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution of India.

6. The result of the foregoing discussion is that the impugned order passed by the First Respondent has to be affirmed and the Petitioner shall immediately furnish the information to the Second Respondent in terms of the impugned order under written acknowledgment and file proof in that regard by 30.11.2020 before the First Respondent.

7. Having due regard to the fact that the scheme devised in the Act requires the State Information Commission to ensure compliance of its orders, the First Respondent shall list the aforesaid Second Appeal on 03.12.2020, and the Public Information of the Petitioner and the Second Respondent shall appear for that hearing without fail. If the First Respondent is not in a position to take up the matter for hearing on that date, it shall inform to all parties concerned of the adjourned date of hearing in the prescribed manner. The First Respondent shall verify whether its order has been complied by the Petitioner and if not, shall take further action in accordance with law following the prescribed procedure in consonance with the principles of natural justice and shall communicate the decision taken to the parties.

Accordingly, the Writ Petition is dismissed with the aforesaid clarifications. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Msm/dm

To

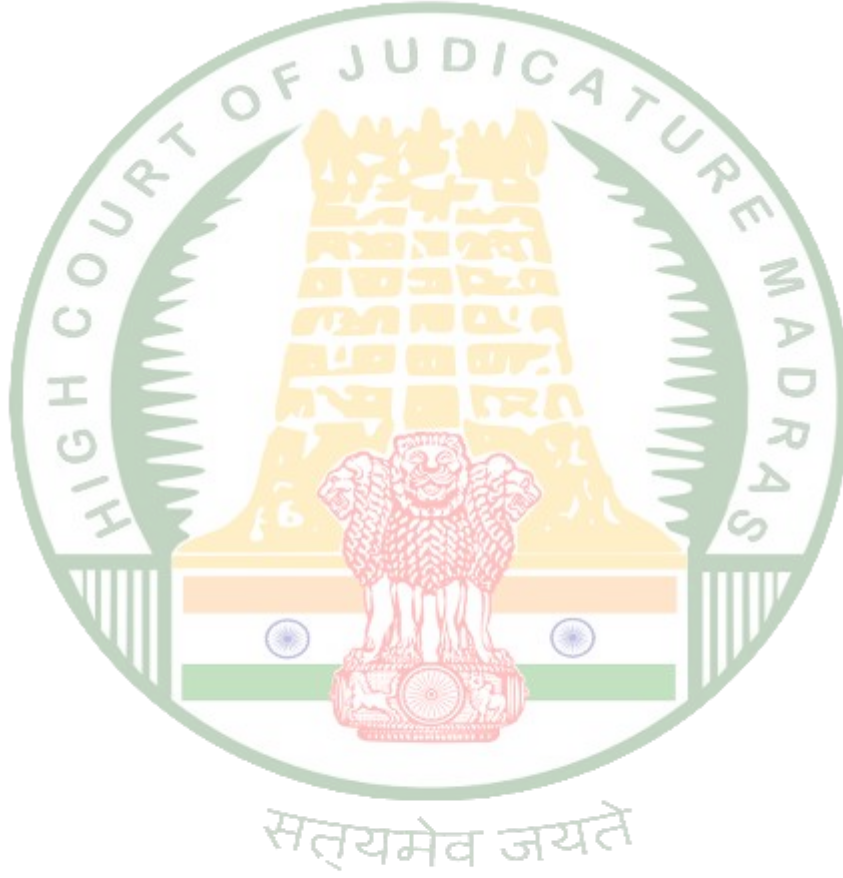
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Copy to

The Secretary,
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RLD (CO)
CS/11/11/2020



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