

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 20..12..2019

Orders Pronounced on: 07..02..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN
and
THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Petition No.5819 of 2019
and W.M.P.Nos.6658 and 6659 of 2019

B.Mohana Priya ... Petitioner
Vs.

1.The Registrar General,
Madras High Court,
Chennai 600 104.

2.The State of Tamil Nadu,
Rep. by its Secretary,
Law Department, Fort St. George,
Chennai 600 009.

3.The Secretary,
Tamil Nadu Public Service Commission,
TNPSC Road, Park Town, VOC Nagar,
Chennai 600 003.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in proceedings in Roc.No.9099/2017/Con.B.1 dated 29.01.2019 and quash the same and for a further direction to the 1st respondent to permit the petitioner to join the duty as Civil Judge based on her academics performance.

For Petitioner : Mr.S.Prabhakaran, Senior
Counsel for Mr.MA.Gouthaman

For Respondent(s) : Mr.B.Vijay, Standing Counsel
for R1

Mrs.P.Rajalakshmi, AGP for R2

Ms.C.N.G.Niraimathi,
Standing Counsel for R3

ORDER

JUSTICE V.BHARATHIDASAN

This writ petition challenges the order passed by the 1st respondent rejecting the candidature of the petitioner for appointment as Civil Judge.

2. The brief facts leading to the filing of the instant writ petition are as follows:- The petitioner is an Advocate enrolled in the Bar Council of Tamil Nadu and Puducherry. Pursuant to the notification issued by the 3rd respondent - Tamil Nadu Public Service Commission [in short, "the respondent commission"] inviting applications from the eligible candidates for filling up 320 vacancies to the posts of Civil Judges in the Tamil Nadu State Judicial Services, she had applied for the post of Civil Judge (Junior Division). She was successful in preliminary examination as well as main examination conducted by the respondent commission. She was also provisionally selected to the post of Civil Judge after a personal interview. However, her name was withheld at the time of final selection without assigning any reason. While so, she was asked to appear before the Registrar (Recruitment), High Court of Madras and thereafter, she was also required to submit details of a criminal case in Crime No.288 of 2010 on the file of Vaduvor Police Station in which the petitioner was arrayed as an accused and she had failed to disclose the same in her application.

3. Pursuant to the above directions, the petitioner appeared before the Committee and informed that she was not aware of the registration of the criminal case against her, however, she had already been discharged from the criminal case and she never involved in any such crime. She had further stated that the alleged criminal case was registered based on a complaint given by her neighbour in respect of a wordy quarrel between her mother and the de facto complainant and she was not at all present at the time of occurrence. Since she had already been discharged from the criminal case, she did not choose to mention the particulars of the case in her application as she was under the bonafide impression that if she mentions the particulars of the case, the same would lead to the submission of unwanted explanation followed by ill repute. As the petitioner had already been discharged from the criminal case, the registration of the criminal case, would not be a bar to seek appointment to the post of Civil Judge.

4. The 1st respondent filed his counter affidavit inter alia stating that the petitioner had suppressed the material

information about the registration of the criminal case in her application. In the recruitment notification the candidates were required to furnish correct and true information regarding the arrest, charges, convictions, named in FIR and involvement in criminal or civil cases including particulars about private complaint, if any, against them. The candidates were required to disclose all those events which relate to the suitability of the applicants for appointment to the post of Civil Judges. Clause 16(g) of the Notification provides that if any dispute or question arises relating to disqualification/suitability of the candidates or interpretations of the Rules, the decision of the Hon'ble Chief Justice, High Court of Madras, shall be final and therefore, the candidates are bound to provide correct and true information about their antecedents and suppression of any such particulars would lead to summary rejection of their candidature. On line application also contained specific questions relating to the involvement of criminal and civil cases. In her application, as against the questions relating to the registration of FIR, the petitioner had answered "No". However, upon verification of the antecedents of the petitioner, the appointing authority had come to know that the petitioner was arrayed as third accused in Crime No.288 of 2010 on the file of Vaduvur Police Station for the alleged offences under section 294(b), 323 and 355 of IPC. She had voluntarily surrendered before the learned Judicial Magistrate-I, Mannargudi, on 25.11.2010 and moved an application for bail in CrI.M.P.No.1125 of 2010 and she was released on the same day on bail subject to certain conditions. However, the criminal case filed against her was closed by the learned Judicial Magistrate-I Mannargudi, under Section 167(5) of Cr.P.C. on 14.03.2012 for non filing of the charge sheet within the stipulated time. The petitioner has purposefully and willfully suppressed the material information in her application and furnished false information. The petitioner failed to disclose the particulars regarding the criminal case registered against her and she has also not offered any plausible explanation for her failure to disclose the particulars of criminal case in her applications. The petitioner is guilty of suppressio veri and her candidature was rightly rejected as she was found not suitable of the post of Civil Judge by the Committee. No illegality or irregularity can be attached to the order rejecting the candidature of the petitioner on the ground of suitability.

5. We have heard the learned senior counsel appearing for the petitioner, the learned standing counsel appearing for the 1st respondent, the learned Additional Government Pleader appearing for the 2nd respondent and also the learned standing counsel appearing for the 3rd respondent.

6. The learned senior counsel for the petitioner would contend that non furnishing of information relating to the registration of a criminal case was not intentional. As the petitioner had been discharged from the criminal case as early as on 14.03.2012 itself, the petitioner inadvertently failed to give particulars of the criminal case in her application and no mala fide can be attributed to her action. That apart, according to the learned senior counsel, the criminal case came to be registered for minor offences for the occurrence due to a wordy quarrel between two neighbors and the petitioner was falsely implicated in the case and no moral turpitude was involved. Therefore, the learned senior counsel contended that the petitioner cannot be found not suitable to the post, particularly as the petitioner had secured high marks in both the preliminary examination as well as main examinations.

7. The learned senior counsel would further submit that the application format is very ambiguous which only required to give particulars as to whether any criminal case registered. Since on the date of application, there was no criminal case pending against the petitioner, she thought it fit to say "No" as against the particular question. When the question itself is ambiguous, the petitioner cannot be penalized for the same. The omission is trivial in nature and therefore, on that ground the candidature of the petitioner cannot be rejected. The rejection of the candidature of the petitioner is therefore improper.

8. The learned standing counsel for the 1st respondent would contend that the instructions to furnish particulars regarding antecedents of the candidates in the application are very clear and unambiguous. The petitioner was required to disclose the particulars as to whether she was named in any FIR and whether she is a party in any criminal or civil proceedings. As per clause 16(g) of the Notification, if any information furnished in the application found to be false, then, the candidature is liable for rejection and the candidate is also liable for criminal prosecution and debarment, etc. Even though an FIR was registered against the petitioner, she had answered in negative saying that no case was registered against her. As the petitioner did not disclose the correct information, her candidature was rightly rejected on the ground of suitability.

9. The learned standing counsel for the respondent Commission adopting the arguments advanced by the learned counsel for the petitioner prayed for dismissal of the writ petition.

10. We have considered the rival submissions carefully.

11. The candidature of the petitioner was rejected on the ground of suitability as she had suppressed the material information regarding the criminal case registered against her. Before going into the merits and demerits of the case, it would be useful to refer to the relevant clause in the guidelines issued by the respondent commission in the form of instructions to the candidates.

12. Clause 16 of the Notification speaks of the other important information to be furnished by the candidates. Clause 16(1) says that on verification, if any information furnished by the applicant in the application is found to be false, then his/her candidature is liable for rejection and also liable for penal action such as criminal prosecution and debarment, etc. Clause 16(1) reads thus:-

"16. Other Important Information:

... ..
... ..

(1) On verification, if the information so furnished by the applicant in the application is found to be false, then his / her candidature is liable for rejection and also suitable penal action such as criminal prosecution and debarment, etc.

So far as the information sought for in the application is concerned, the applicants were specifically required to furnish particulars in respect of "criminal case registered" which reads as follows:-

Have you been detained / :
arrested / ☐ released ☐
Bail/Named in the FIR/charge
sheeted/prosecuted in any
criminal case/convicted for
offence

(involving moral turpitude or
any other offence)?

Whether undergone imprisonment
in a private complaint case?

Are you named in a private
complaint as accused?

Are you / were a party in any
civil / criminal proceedings?

13. For all the above questions, the petitioner answered in the negative as "No". Admittedly, a criminal case was registered against the petitioner in Crime No.288 of 2010 on the file of Vaduvur Police Station for the alleged offences under section 294(b), 323 and 355 of IPC. It is contended in the counter affidavit by the 1st respondent that in the above criminal case, the petitioner had voluntarily surrendered before the learned Judicial Magistrate-I, Mannargudi along with an application for bail and she was enlarged on bail on the same day. However, the criminal case was closed under Section 167(5) of Cr.P.C. on 14.03.2012 as the final report was not filed within a period of limitation. The above facts were not disputed by the petitioner. When a criminal case was registered against the petitioner, she ought to have disclosed the same in the application as she was specifically required to furnish particulars as to whether she has been named in the FIR and whether she was a party in any civil or criminal proceedings. Admittedly, the petitioner did not disclose the criminal case registered against her and did not give correct information in her application.

14. It is contended by the learned senior counsel appearing for the petitioner that there was no mala fide intention on the part of the petitioner to suppress the information, as she had already been discharged from the criminal charges and in that circumstances, she had inadvertently failed to mention. This submission cannot be countenanced for the simple reason that merely because the petitioner had been discharged from the criminal case she ought not to have chosen to withhold the information. She was expected to disclose the true information within her knowledge and non disclosure of the same would certainly entail rejection of her candidature as per clause 16(1) of the Notification issued by the respondent Commission. Therefore, the 3rd respondent was right in withholding the selection of the petitioner. Thereafter, an enquiry was ordered by the appointing authority. During enquiry, opportunity of personal hearing was afforded to the petitioner. After enquiry, The Committee on considering all the materials placed before it, had recommended for the rejection of the candidature of the petitioner on the ground of suitability. We, therefore, found no illegality or irregularity in the order passed by the 1st respondent.

15. It is settled law that the instructions issued by the Commission are mandatory in nature and should be strictly adhered to by the candidates and violation of any such instructions would only entail rejection of candidature. Very recently, the Hon'ble Supreme Court in The State of Tamil Nadu

v. G.Hemalathaa, (Civil Appeal No.6669 of 2019 dated 28.08.2019)
has held as follows:-

"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 Commission."

16. For the foregoing reasons, we do not find any merit in the writ petition and we are of the view that the writ petition deserves only to be dismissed.

In the result, this Writ Petition is dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-

Assistant Registrar(C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1.The Registrar General,
Madras High Court, Chennai 600 104.

2.The Secretary, Law Department,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.

3.The Secretary, Tamil Nadu Public Service Commission,
TNPSC Road, Park Town, VOC Nagar, Chennai 600 003.

Copy To: The Section Officer, Legal Cell,
High Court of Madras, Chennai -104.

+1 cc to M/s.A.Gowthaman,Advocate Sr.No. 9850

AKM/12.03.2020/7P- 6C /

Order
in Writ Petition No.5819 of 2019