

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.8549 of 2019

G.K.Eswaran

.. Petitioner

Vs.

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

2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Park Town, Chennai - 600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent made in Roc.No.9099/2017-Con.B.1, dated 29.01.2019, to quash the same and to consequently direct the respondents to consider the claim of the petitioner vide Regn.No.170002101 for appointment to the post of Civil Judge with all service benefits thereto.

For Petitioner : Ms.N.R.Jasmine Padma

For Respondent 1 : Mr.B.Vijay
Standing Counsel

For Respondent 2 : Ms.C.N.G.Niraimathi
Standing Counsel

O R D E R

(Order of the Court was made by V.BHARATHIDASAN, J.)

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, he had applied for the post of Civil Judge (Junior Division). He was successful in preliminary examination as well as main examination conducted by the respondent Commission. He was also provisionally selected to the post of Civil Judge after a personal interview. However, his name was withheld at the time of final selection without assigning any reason. While so, he was asked to appear before the Registrar (Recruitment), High Court of Madras and he was also required to submit details of a criminal case in Crime No.852 of 2009, on the file of Erode Town Police Station, in which the petitioner was arrayed as an accused, but he had failed to disclose the same in his application.

3. Pursuant to the above directions, the petitioner appeared before the Committee and informed that, since he had already been acquitted from the criminal case, he did not choose to mention the particulars of the case in his application as he was under the bonafide impression that, if he 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 acquitted 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 his 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 The 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. Online application also contained specific questions relating to the involvement of criminal and civil cases. In his 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 implicated as ninth accused in Crime No.852 of 2009 on the file of Erode Town Police Station for the alleged offences under Sections 143, 153, 188 of I.P.C. and 7 (1) (A) of the Criminal Law (Amendment) Act, Section 12 of

Press and Registration of Books Act, 1867 and 3A of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. The police after completion of investigation filed chargesheet on 26.10.2009, on the file of the Judicial Magistrate No.II, Erode and case was taken on file in C.C.No.585 of 2009. The Criminal Case registered against the petitioner ended in acquittal under Section 255(ii) of Cr.P.C. by judgement dated 09.04.2012, on the file of the learned Judicial Magistrate No.II, Erode. The petitioner has purposefully and willfully suppressed the material information in his application and furnished false information. The petitioner failed to disclose the particulars regarding the criminal case registered against him and he has also not offered any plausible explanation for his failure to disclose the particulars of criminal case in his application. The petitioner is guilty of suppression of truth and his candidature was rightly rejected as he was found not suitable to 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 unsuitability.

5. We have heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for the 1st respondent and the learned standing counsel appearing for the 2nd respondent.

6. The learned 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 acquitted from the criminal case as early as on 09.04.2012 itself, the petitioner inadvertently failed to give particulars of the criminal case in his application and no mala fide can be attributed to his action.

7. The learned 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, he 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 he was named in any FIR and whether he is a party in any criminal or civil proceedings. As per Clause 16(g) of the Notification, if any information furnished in the application is 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, he had answered in negative saying that no case was registered against him. As the petitioner did not disclose the correct information, his 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 1st respondent 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 he had suppressed the material information regarding the criminal case registered against him. 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 on
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.852 of 2009, on the file of Erode Town Police Station for the alleged offences under Sections 143, 153, 188 of I.P.C. and 7(1)(A) of the Criminal Law (Amendment) Act, Section 12 of Press and Registration of Books Act, 1867 and 3A of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. It is contended in the counter affidavit by the 1st respondent that the Criminal Case registered against the petitioner ended in acquittal under Section 255(ii) of Cr.P.C. The above facts were not disputed by the petitioner. When a criminal case was registered against the petitioner, he ought to have disclosed the same in the application as he was specifically required to furnish particulars as to whether he has been named in the FIR and whether he was a party in any civil or criminal proceedings. Admittedly, the petitioner did not disclose the criminal case registered against him and did not give correct information in his application.

14. It is contended by the learned counsel appearing for the petitioner that there was no mala fide intention on the part of the petitioner to suppress the information, as he had already been acquitted in the criminal case and in that circumstances, he had inadvertently failed to mention. This submission cannot be countenanced for the simple reason that merely because the petitioner had been acquitted from the criminal case he ought not to have chosen to withhold the information. He was expected to disclose the true information within his knowledge and non disclosure of the same would certainly entail rejection of his candidature as per Clause 16 (1) of the Notification issued by the respondent Commission. Therefore, the 2nd 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.

17. In the result, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The Registrar General,
High Court, Chennai - 600 104.
2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Park Town, Chennai - 600 003.

Copy To

1. The Section Officer,
B Section, High Court, Madras.
2. The Judicial Magistrate, Erode.

W.P.No.8549 of 2019

MG (CO)

<https://hcservices.courts.gov.in/hcservices/>
GMI (28/07/2020)