

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.09.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.P.No.11686 of 2020

M.Thalapathi Rajinikanth

...Petitioner

...vs...

1. Tamilnadu Public Service Commission (TNPSC)
Represented by the Secretary, Chennai-600 003.
 2. The Public Information Officer,
Tamilnadu Public Service Commission (TNPSC)
Chennai-600 003.
 3. Tamilnadu State Information Commission,
Represented by the Registrar,
Teynampet,
Chennai-600 018.
- ...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the respondent to consider the petitioner's representation dated 27.06.2020 and pass a suitable orders in accordance with law within a time frame prescribed by this Court.

For Petitioner : Mr.M.Palanimuthu

O R D E R

SENTHILKUMAR RAMAMOORTHY J.,

The Petitioner is an advocate who applied for the post of Civil Judge (Junior Division) pursuant to a notification/advertisement dated 07.02.2008 of the Tamil Nadu Public Service Commission (the TNPSC). In connection therewith, he took a written examination on 02.08.2008 and 03.08.2008 at Salem. The Petitioner states that he performed very well in the examination, but did not pass the examination when the results were announced. Therefore, he submitted a petition dated 23.10.2008 under the Right to Information Act, 2005 [the RTI

Act] to the second Respondent for obtaining a copy of his evaluated answer sheets and books as also the evaluated answer sheets and books of other candidates from the same (i.e. scheduled caste) community who participated in the said examination. This information was not provided by the second Respondent to the Petitioner. Accordingly, the Petitioner filed an appeal before the appellate authority of the TNPSC on 12.12.2008. This information was refused by reply dated 03.01.2009 on the ground that it is confidential information and, therefore, exempted from disclosure under Section 8 (1)(d) of the RTI Act. In these circumstances, the Petitioner filed a second appeal before the third Respondent on 02.02.2009. By order dated 15.07.2009, the third Respondent directed the second Respondent to provide the information requested for by the Petitioner within two weeks of the order.

2. The first Respondent challenged the said order of the third Respondent by filing W.P. No.14227 of 2010. Notice was issued on this writ petition on 16.07.2010 and the said writ petition was pending adjudication until 26.09.2019 when it was dismissed as withdrawn.

3. After the dismissal of the writ petition, the Petitioner sent representations dated 30.10.2019 and 27.06.2020 to the first Respondent requesting that he be appointed as a civil judge or in any other eligible post because pending the protracted proceedings, he had crossed the age of 45 and, therefore, is not in a position to go through a formal selection process. The present writ petition is filed in view of the failure of the first Respondent to respond to the representations of the Petitioner.

4. We heard Mr.M.Palanimuthu, the learned counsel for the Petitioner. Mr.Palanimuthu submitted that the Petitioner is an advocate, who is about 46 years old now. He proceeded to reiterate the averments in the affidavit in support of the writ petition, which have been referred to supra. In particular, he emphasized that the third Respondent allowed the appeal of the Petitioner by order dated 15.07.2009 in Case No.7859/Enquiry/2009 and directed the second Respondent to provide the information that was requested for by the Petitioner within two weeks from the date of the order. Instead of complying with the said order, he pointed out that the first Respondent, which is a constitutional authority, unlawfully challenged the order of the third Respondent by filing W.P. No.14227 of 2010. In view of the filing of the said writ petition, no further action was taken by the second Respondent to provide the information requested for by the Petitioner. Eventually, after almost ten years, the first Respondent withdrew the writ petition and an order dismissing the writ

petition as withdrawn was issued on 26.09.2019. Until such time, the Petitioner was unable to take further steps in the matter. Shortly thereafter, he submitted representations on 30.10.2019 and 27.06.2020 to the first Respondent. By these representations, he requested that he should be appointed as a Civil Judge [Junior Division] or in any other eligible post.

5. We considered the submissions of the learned counsel for the Petitioner and examined the records. The undisputed position is that the Petitioner applied for the post of Civil Judge [Junior Division] in the year 2008 and took written examinations for this purpose on 02.08.2008 and 03.08.2008. It is also the admitted position that he did not qualify in the said examination and the dispute revolves around the evaluation of his answer sheets. After the publication of the results, the Petitioner requested for information relating to the evaluation of his answer sheets and that of other scheduled caste candidates who took the said examinations. This request was denied by the first and second Respondents until the said decision was reversed by the third Respondent by order dated 15.07.2009. As against this order, the first Respondent filed a writ petition in the year 2010. From the documents filed by the Petitioner, it is clear that notice was ordered in the said writ petition on 16.07.2010 and no interim orders were passed. However, the Petitioner did not take any further steps to ensure that the order dated 15.07.2009 was complied with. He also did not file independent legal proceedings to challenge his non-selection to the post of Civil Judge [Junior Division]. Meanwhile, about twelve years have lapsed. The Petitioner also admits that he has exceeded the maximum age specified for recruitment as a Civil Judge [Junior Division]. The representations dated 30.10.2019 and 27.06.2020 should be viewed in this context.

6. Upon perusal of the representations, we find that the Petitioner requested that he should be appointed either as a Civil Judge [Junior Division] or in any eligible post. He admitted in the said representations that he is not in a position to take the examination or go through the selection process for such purpose because he was 45 years old. In these facts and circumstances of the case, we find that the Petitioner has not established the existence of a legal right to be considered for appointment to the post of Civil Judge [Junior Division] without going through the prescribed selection process. Equally, the Petitioner has failed to establish the existence of a statutory duty on the part of the first Respondent to comply with the request in his two representations. The law as to when a mandamus may be issued has been restated in a plethora of judgments of the Hon'ble Supreme Court. By way of illustration, reference may be made to the

judgment in Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC 638 at page 658, wherein it was held, inter alia, as under:

"17. Coming to the third question, which is more important from the point of consideration of the High Court's power for issuance of mandamus, it appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression "for any other purpose". The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be

subsisting on the date of the petition (Kalyan Singh v. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. "

As stated above, the petitioner has not satisfied these requirements. Therefore, this writ petition is devoid of merit and no case is made out for issuance of a writ of mandamus.

7. In the result, the writ petition is dismissed. There will be no order as to costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

- 1.Tamilnadu Public Service Commission (TNPSC)
Represented by the Secretary, Chennai-600 003.
- 2.The Public Information Officer,
Tamilnadu Public Service Commission (TNPSC)
Chennai-600 003.
- 3.The Registrar,
Tamilnadu State Information Commission
Teynampet, Chennai-600 018.

W.P.No.11686 of 2020

SPD(CO)
RMP(18/11/2020)

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