

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2020

CORAM:

The Hon'ble DR. Justice VINEET KOTHARI
and
The Hon'ble Mr. Justice M.S.RAMESH

W.P.No.18028 of 2020
and CMP.No.22384 of 2020

A.Anand Babu ...Petitioner

Vs.

The Principal District Judge,
Erode. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the respondent vide A.No.125/2020, D.No.8294 dated 21.10.2020 and to quash the same and consequently direct the respondent to issue No Objection Certificate to the petitioner for appointment of Stenographer in Group IV Services held by the Tamil Nadu Public Service Commission.

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.K.M.Kempuraj

O R D E R

[Order of the Court was made by M.S.RAMESH, J.]

Heard Mr. S.Vijayakumar, learned counsel for the petitioner and Mr. M.Kempuraj, learned counsel representing the learned Principal District Judge, Erode.

2.1. The brief facts of the case are as follows:

The petitioner joined the post of Steno-Typist, Grade-III on 01.04.2019 in the Court of Special Sub Judge, Erode District, through a recruitment conducted by the Tamil Nadu Public Service Commission (TNPSC), in which post he is currently employed.

2.2. By a subsequent Notification No.19/2019 dated 14.06.2019, the TNPSC had called for recruitment to the post of Stenographer in Group IV Services. The petitioner, who had applied for the said post on 25.06.2019, had cleared the written examination on 01.09.2019. When the petitioner had

applied for a 'No Objection Certificate' (NOC) vide application dated 18.03.2020, the learned Principal District Judge, Erode passed an order on 07.05.2020, rejecting the petitioner's request for NOC on the grounds that he had not obtained prior permission before making the application and further that the new selection is also for the same cadre. His subsequent request was also rejected by the learned Principal District Judge, Erode on 21.10.2020, quoting that his application has already been rejected and therefore cannot be entertained. Aggrieved against the rejection of the petitioner's request for NOC, the present Writ Petition has been filed.

3. Mr. S.Vijayakumar, learned counsel for the petitioner admitted that the petitioner had not intimated his employer, prior to submitting his application for the post of Stenographer in Group-IV Services conducted by the TNPSC on 01.09.2019. However, he made an earnest request that since the petitioner has now been selected and called for certificate verification and counselling, an opportunity may be given. According to the learned counsel, the time for submission of the NOC has been extended.

4. Per Contra, Mr. M.Kempuraj, learned counsel representing the learned Principal District Judge, Erode submitted that as per Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973, the petitioner ought to have intimated the learned Principal District Judge, Erode before making an application. He further placed reliance on the averments in the counter affidavit dated 07.12.2020 and submitted that the petitioner had made false declarations in the application before the TNPSC, as if he had already intimated the learned Principal District Judge, Erode about his intention to apply for the posts and therefore, the learned Principal District Judge, Erode was constrained to reject the petitioner's request.

5. We have given our anxious consideration to the submissions made and perused the materials on record.

6. Admittedly, the petitioner has not informed the learned Principal District Judge, Erode, prior to applying for the posts of Stenographer, Group IV Services conducted by the TNPSC on 01.09.2019. The main reason assigned by the learned Principal District Judge, Erode for rejecting the petitioner's application dated 18.03.2020, seeking for issuance of an NOC is that, the petitioner had not intimated his employer before applying for the said post.

7. The proviso to Rule 3(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973 reads as follows:

"Provided that in the case of an application

for a post called for by the Tamil Nadu Public Service Commission, the Government servant shall apply directly including through "on line" in the Optical Mark Reader (OMR) application form to the Tamil Nadu Public Service Commission, duly informing the fact to his appointing authority in writing subject to the condition that he should produce "No Objection Certificate" in this form annexed to these rules, from the appointing authority:-

i) at the time of oral test in respect of posts for which the selection comprises written examination and oral test; or

ii) at the time of sending the original certificate for verification, in respect of posts for which the selection comprises only written examination."

The aforesaid provision requires a Government Servant to duly inform his appointing authority in writing while applying for a post called for by the TNPSC and further mandates production of an NOC from the appointing authority, in the required Form, at the time of oral test/original certificate verification. While correlating the reasons assigned in the impugned order with Rule 3(1), it cannot be said that the learned Principal District Judge, Erode was wrong in rejecting the petitioner's request on the ground that he had not obtained prior permission. Nevertheless, the second portion of the impugned order dated 07.05.2020, stating that the new selection is also of the same cadre in which the petitioner is now employed, may not be a valid reason for the purpose of rejection, since there is no bar restricting a Government employee to participate in another recruitment process of the same cadre.

8. Production of the NOC under Rule 3(1) is a mandatory procedure and such production of NOC, in the petitioner's case, should be at the time of the original certificate verification. Non-production of such NOC will disentitle a candidate for appointment. However, insofar as the provision for duly informing the appointing authority about the petitioner's intention to apply for the posts called for by the TNPSC is concerned, the wordings in the Rule is not mandatory in nature but rather directory. Though it would be imperative for a Government employee to duly inform his appointing authority, prior to making an application for the posts called for by the TNPSC, failure to do so may not disentitle him for appointment by TNPSC, since the Rule also mandates for production of an NOC from the Government employees' appointing authority. At the most, his failure to intimate his employer could be viewed by his Appointing Authority, as a violation of the statutory rules.

9. Insofar as the submission of the learned counsel for the learned Principal District Judge, Erode that the

petitioner had made mis-declaration in his application form in connection with prior intimation is concerned, such a reason has not been assigned in the impugned order rejecting the petitioner's request for NOC. It is a settled proposition of law that the averments in the counter affidavit cannot improve the reasoning assigned in the impugned order. Thus, we do not intend to delve upon such a submission made.

10. In this background, we are of the view that the petitioner could be extended with an opportunity to opt for his new employment, which is also his fundamental right, as guaranteed under the Constitution of India. Since we intend to take a sympathetic view in the matter, the present order shall not be quoted as a precedent in any other similar cases.

11. For all the foregoing reasons, the impugned order dated is set aside and the Writ Petition stands allowed. Consequently, the learned Principal District Judge, Erode is requested to issue an NOC to the petitioner for appointment to the posts of Stenographer Grade-IV held by the TNPSC, as expeditiously as possible. Connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

The Principal District Judge,
Erode.

+lcc to Mr.S.Vijayakumar, Advocate, S.R.No. 41053

+lcc to Mr.M.Kempuraj, Advocate, S.R.No. 41257

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and
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RLD (CO)
GN(07/01/2021)