



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.02.2020**

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P(MD)No.2255 of 2020

and

W.M.P(MD)No.1902 of 2020

WEB COPY

P.Seenidurai

:Petitioner

/.vs./

1.The Director,
Forensic Sciences Department,
30-A, Kamarajar Salai,
Mylapore,
Chennai-4.

2.The Deputy Director,
Excise Division,
Forensic Sciences Department,
30-A, Kamarajar Salai,
Mylapore,
Chennai-4.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent pertaining to the impugned Circular Memorandum in A8/33798/2019, dated 15.4.2019 and quash the same insofar as the Petitioner is concerned and consequently direct the 1st respondent to issue the 'No Objection Certificate' to the Petitioner.

For Petitioner
For Respondents

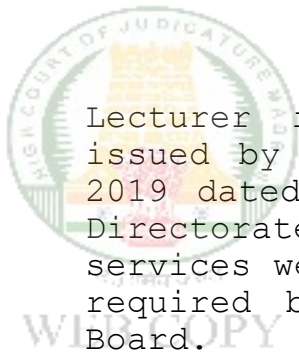
:Mr.A.John Vincent
:Mr.M.Jeyakumar
Addl.Govt.Pleader

O R D E R

This Writ Petition is filed seeking issuance of a Writ of Certiorarified Mandamus to quash the impugned Circular in Circular No.A8/33798/2019, dated 15.4.2019 issued by the first respondent and consequently direct the first respondent to issue the 'No Objection Certificate' to the Petitioner.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.The Petitioner herein is serving as a Junior Scientific Officer in the Forensic Sciences Department from the year 2017 onwards. Since the Petitioner intended to apply to the post of



Lecturer in Polytechnic Colleges, pursuant to the notification issued by the Teachers Recruitment Board in Notification No.14 of 2019 dated 27.11.2019, he had submitted an application before the Directorate through the Deputy Director before whom the Petitioner's services were attached, seeking for 'No Objection Certificate', as required by the Notification issued by the Teachers Recruitment Board.

4.The first respondent herein seems to have passed a Circular dated 15.4.2019, directing the Deputy Directors in the Main Laboratory and Regional Forensic Sciences Laboratories not to forward such requests to the Directorate, by quoting the inconvenience caused to the effective functioning of the Forensic Department. The said Circular is put under challenge in the present Writ Petition.

5.It is needless to point out that the right to claim an employment is a right recognised under the Constitution of India and as such, the Petitioner's intention to seek for alternate employment, cannot be found fault with. The only reason cited by the respondents for denying the issuance of 'No Objection Certificate' is in view of the impugned Circular, which in-turn places reliance on Rule 3(1) of the Tamil Nadu Government Servants' Application For Posts Rules, 1973. Rule 3(1) of the said Rules reads as follows:

'3(1)A person employed in a service under the administrative control of the State Government applying for a post, or for transfer to a post, in another office or department of the State Government or under another State Government of the Government of India, shall submit his application through the authority competent to appoint him to the post which he holds at the time of making the application. Such authority shall decide whether the applicant shall be permitted to apply. In the case of an application for a post under another State Government or the Government of India, the appointing authority shall decide whether the application may be forwarded or not and send the case to the State Government in the administrative department concerned for orders with its recommendations. In making a recommendation in this regard, the fact that the applicant has been given special training wholly or partly at the cost of the State Government shall also be taken into consideration. Ordinarily applications may be forwarded unless it is considered that by so doing the interests of public service are likely to suffer.'

6.The aforesaid rules is self-explanatory and what is provided is that when an application is made by the employee for a post, the authority can decide as to whether the applicant shall be permitted



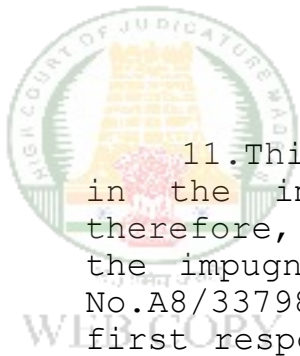
to apply. The Rule stipulates that the applications should be ordinarily forwarded, unless it is considered that by doing so, the interest of public services are likely to suffer.

7.The present impugned circular effectively precludes the Junior Scientific Officers / Scientific Officers / Lab Assistants from seeking for an alternate employment in any other Department, since the circular instructs the Deputy Directors to refrain from considering and forwarding applications to the Directorate for issuance of 'No Objection Certificate' or for seeking permission to apply for any posts in other services under the Central Government / State Government / Colleges / Universities / etc. When the Government employees are vested with the right seeking for an alternate employment, the circular placing an embargo to such a right cannot be sustained.

8.Rule 3(1) of the aforesaid Rules states that the application seeking for No Objection / Permission, should ordinarily be considered. However, the impugned circular has overstepped this provision and by way of executive instructions have curtailed the consideration provided under the Rule. It is a settled proposition of law that executive instructions cannot override the statutory rules and at the most, can only interpret the rule-provision and that the interpretation should be in conformity with the rule laid down. In other words, while Rule 3(1) of the aforesaid Rules stipulates that the applications seeking No Objection Certificate should ordinarily be considered, the circular places an embargo that such applications should not be ordinarily considered.

9.Apart from the above, the Rule refers to exceptions, where the interests of public service would be affected by issuance of 'No Objection Certificate / permission'. When the Rule predominantly directs the authorities to issue 'No Objection Certificate', the exception to the said Rule requires to be properly applied in the correct perspective for the purpose of establishing that a particular case does not deserve grant of 'No Objection Certificate / Permission' and the prejudice that would be caused to the interests of public service, should be clearly spelt out by way of a speaking order.

10.In the present case, the authorities have not responded to the petitioner's request for issuance of 'No Objection Certificate', but have kept the request pending, which has prompted the petitioner to file the present writ petition. The first respondent ought to have realised that the purpose for making an application for appointment, is a time bound process. By keeping the application pending indefinitely, the same would amount to dereliction of duties of a statutory authority and therefore, this Court would be justified in invoking its extraordinary powers under Article 226 of



11.This Court is of the affirmed view that the embargo placed in the impugned circular, is unjustifiable and arbitrary and therefore, cannot stand scrutiny in the eye of law. Accordingly, the impugned circular issued by the first respondent in Circular No.A8/33798/2019, dated 15.4.2019 is set aside. Consequently, the first respondent is directed to issue 'No Objection Certificate' to the Petitioner forthwith, in any event, before 11.02.2020, since it is stated that the last date for submission of 'No Objection Certificate' is on 12.02.2020.The learned Additional Government Pleader appearing for the respondents is called upon to inform the respondents about the order passed in this Writ Petition, in order to enable them to issue the 'No Objection Certificate' forthwith.

12.With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn/sm

To

- 1.The Director,
Forensic Sciences Department,
30-A, Kamarajar Salai,
Mylapore,
Chennai-4.
- 2.The Deputy Director,
Excise Division,
Forensic Sciences Department,
30-A, Kamarajar Salai,
Mylapore,
Chennai-4.
- 3.The Additional Government Pleader,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.JOHN VINCENT, Advocate, SR No.5435

W.P(MD)No.2255 of 2020

and

W.M.P(MD)No.1902 of 2020

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