



W.P (MD) No. 516 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.12.2021

CORAM:

THE HONOURABLE MR. JUSTICE **B. PUGALENDHI**

W.P (MD) No. 516 of 2020

and

W.M.P (MD) Nos. 390, 1763 of 2020

V. Thatchinamoorthi

... Petitioner

Vs

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

2. The Assistant Director,
Survey and Land Records Department,
Virudhunagar District,
Virudhunagar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Certiorarified Mandamus to call for the records relating to the Memorandum No. 868/PSD-C1/2019, dated 30.12.2019 passed by the first respondent and quash the same and consequently direct the first respondent to reappoint / continue the petitioner as Draughtsman in the second respondent office.



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For Petitioner : Mr.J.Deliban

For Respondents : Mr.Isaac Mohanlal,
Senior Counsel
for Mr.V.Panneerselvam
for R.1

Mr.V.Nirmalkumar,
Government Advocate for R.2

ORDER

This writ petition is filed by the petitioner as against the order dated 20.11.2019 passed by the first respondent removing him from service.

2.According to the petitioner, he applied for the Group IV services conducted by the respondents for the year 2015-16, 2016-17, 2017-18, through online. He also secured 243 marks in the written examination conducted by the first respondent and on 13.12.2019, he was provisionally selected for appointment on direct recruitment to the post of Draughtsman. The respondents have issued a selection intimation letter dated 28.11.2018 and by the proceedings of the second respondent dated 11.06.2019, he was appointed as Draughtsman in the Virudhunagar District. He also completed



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his training on 12.09.2019. While so, on 04.11.2019, the first respondent issued a show cause notice that this petitioner has suppressed a criminal case which was pending against him in Crime No.236 of 2008. The petitioner has submitted a detailed reply that the case in Crime No.236 of 2008 was quashed by this Court in Cr1.OP(MD)No.16186 of 2018 and also placed the facts of the case before the first respondent. However, without considering the same, the first respondent has passed the impugned order removing him from service.

3.Learned Counsel appearing for the petitioner submitted that the case in Crime No.236 of 2008 was registered mainly against one Balamurugan that the daughter of the defacto complainant eloped with the said Balamurugan. On the complaint of the defacto complainant, the other students have also been added as accused and this petitioner is also arrayed as an accused. After the registration of the FIR, the case was also amicably settled among the parties and was subsequently quashed by this Court in Cr1.O(MD)No. 16186 of 2018, dated 10.09.2018. Without considering the



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same, the first respondent has mechanically removed the petitioner from service.

4.He further submitted that the first respondent is not the authority to pass the impugned order, since he is only a nodal agency for the process of recruitment and after the appointment, it is only the second respondent who has power to remove the petitioner from service. By relying upon the decision of the Hon'ble Supreme Court in **Avatar Singh v. Union of India and Others [AIR 2016 SC 3598]**, the learned Counsel submitted that a chance for reformation has to be offered to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied, but is one of the facts to be taken into consideration while exercising the power of cancelling candidature or discharging the employee from service. Therefore, he prayed for interference.

5.Learned Senior Counsel appearing for the first respondent submitted that the first respondent has received a complaint that this petitioner is an accused in a criminal



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case. But, the petitioner in his application has stated that there is no criminal case pending against him. Based on the complaint received, the first respondent vide letter dated 09.08.2018, requested the Assistant Director, Survey and Settlement, Virudhunagar to make an enquiry into the allegations and to furnish a report. The Assistant Director, accordingly, filed his report on 18.09.2018 that a case was registered against this petitioner in Crime No.236 of 2008 along with 19 others on the file of the Thadikombu Police Station. The case was pending for more than ten years and finally quashed by this Court in Crl.OP(MD)No.16186 of 2018 on the compromise arrived between the parties.

6.Learned Senior Counsel further submitted that as on the date of notification on 14.11.2017, the case was pending, however, the petitioner in his online application has suppressed the same and mentioned that no criminal cases are pending against him. Therefore, they have issued a show cause notice on 23.10.2019 and have also passed the impugned order. He has also relied upon the instructions issued to the candidates in the notification and submitted that the



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conditions of instructions is of paramount importance and the Courts cannot modify / relax the instructions issued by the Commission.

7.This Court considered the rival submissions and also perused the available materials.

8.The petitioner is arrayed as an accused in Crime No. 236 of 2008 on the file of the Thadikombu Police Station, for the offence under Sections 147, 148, 341, 366, 506(ii) IPC. The case was registered on 16.07.2008 and it was quashed by this Court in Crl.OP(MD)No.16186 of 2018, dated 10.09.2018. The notification for the Group IV services examination was issued by the first respondent on 14.11.2017. Therefore, as on the date of application, a criminal case was pending as against the petitioner.

9.The notification dated 14.11.2017 issued by the first respondent calling for applications to the posts included in Group IV services is placed before this Court and in



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paragraph no.19(b)(ii)(b) under the heading

"Disqualification / Debarment", it is mentioned as follows:-

"Instructions to the Candidates:-

19(b)(ii)(b) Suppression of material information regarding criminal cases, arrests, convictions debarment or disqualification by Union Public Service Commission / State Public Service Commissions.

(iii) ... that the applicant responsible for such act will be debarred from appearing for the examinations and selections held by this Commission permanently or for such period of years as the Commission may decide."

10.The application dated 24.11.2017 filed by the petitioner for the posts included in the Group IV services is also placed before this Court. A specific detail was asked for from the candidates in the application with regard to the criminal cases, if any, registered, for which, the petitioner has replied in negative, knowing fully well that he is having a criminal case as on that date.



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11.The Hon'ble Supreme Court, in **State of Tamil Nadu and Others v. G.Hemalathaa & Another [Civil Appeal No.6669 of 2019, decided on 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.

8. The High Court after summoning and perusing the answer sheet of the Respondent was convinced that there was infraction of the Instructions. However, the High Court granted the relief to the Respondent on a sympathetic consideration on humanitarian ground. The judgments cited by the learned Senior Counsel for the Respondent in Taherakhatoon (D) By LRs v. Salambin Mohammad and Chandra Singh and Others v. State of Rajasthan and Another in support of her arguments that we should not entertain this appeal in the absence of any substantial questions of law are not applicable to the facts of this case.



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9. In spite of the finding that there was no adherence to the Instructions, the High Court granted the relief, ignoring the mandatory nature of the Instructions. It cannot be said *M. Vennila v. Tamil Nadu Public Service Commission*, (2006) 3 Mad. LJ 376, (1999) 2 SCC 635, (2003) 6 SCC 545 that such exercise of discretion should be affirmed by us, especially when such direction is in the teeth of the Instructions which are binding on the candidates taking the examinations.

... ..

12. After giving a thoughtful consideration, we are afraid that we cannot approve the judgment of the High Court as any order in favour of the candidate who has violated the mandatory Instructions would be laying down bad law. The other submission made by Ms. Mohana that an order can be passed by us under Article 142 of the Constitution which shall not be treated as a precedent also does not appeal to us."

12.In the present case on hand, though the criminal case in Crime No.236 of 2008, dated 16.07.2008, was subsequently quashed by this Court in CrI.OP(MD)No.16186 of 2018, dated 10.09.2018, on the compromise arrived upon



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between the parties, the fact remains that the case was pending as on the date of application on 24.11.2017 and the petitioner has clearly suppressed the same in the online application.

13.In view of the above position and in view of the ratio laid down by the Hon'ble Supreme Court extracted supra, this Court is not inclined to entertain this writ petition and the same is accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Internet : Yes
Index : Yes / No
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To

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2.The Assistant Director,
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B.PUGALENDHI, J.

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