



W.P.Nos.11072 & 11494 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 22.02.2023

Orders delivered on 18.04.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.Nos.11072 & 11494 of 2015

and

W.M.P.No.1 of 2015 & W.M.P.No.30887 of 2016

W.P.No.11072 of 2015

M.K.Muthu Raja

..Petitioner

Vs

1. The Deputy Secretary,
Tamil Nadu Public Service Commission,
VOC Street, Park town,
Chennai .

2. The Secretary,
Personnel and Administrative Reforms Department,
St.George Fort,
Chennai - 9.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue
a Writ of Certiorarified Mandamus to call for the 1st respondent's impugned



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order in Memorandum No.7166/OTD-C1/2010 dated 17.09.2014 and quash the same as illegal and consequently direct the 1st respondent to appoint the petitioner as Assistant Commissioner of Hindu Religious and Charitable Endowments Department.

For Petitioner	: Mr.Isaac Mohanlal Senior Counsel for Mr.M.Murushothaman
For Respondents	: Mr.I.Abrar Md.Abdullah Standing Counsel for R1/ TNPSC Mr.A.M.Ayyathurai for R2.

W.P.No.11494 of 2015

M.K.Muthu Raja

..Petitioner

Vs

The Secretary,
Tamil Nadu Public Service Commission,
VOC Street, Park town,
Chennai .

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the 1st respondent's impugned order in



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Memorandum No.3032/OTD-B4/2011 dated 17.02.2015 and quash the same as illegal.

For Petitioner	: Mr.Isaac Mohanlal Senior Counsel for Mr.M.Murushothaman
For Respondents	: Mr.I.Abrar Md.Abdullah Standing Counsel for R1/ TNPSC Mr.A.M.Ayyathurai for R2.

COMMON ORDER

W.P.No.11072 of 2015 has been filed challenging the order passed by the 1st respondent dated 17.09.2014, in which, the application of the petitioner, for the post of Assistant Commissioner in the Hindu Religious and Charitable Endowments Administration Department, in the Tamil Nadu Hindu Religious and Charitable Endowments Administration Service, included in Group-I B Service, 2009-2011, was rejected.

W.P.No.11494 of 2015 has been filed challenging the order passed by the 1st respondent dated 17.02.2015, in which, the petitioner was directed to show cause as to why his application for the post of Executive Officer



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Grade-I in Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service for the years 2009-2011 should not be rejected; answer book for the direct recruitment should not be invalidated; provisional admission to Oral Test should not be cancelled; his provisional selection to the said post should not be cancelled and why he should not be debarred from appearing any of the examinations/selections to be conducted by the commission in future for the period as decided by the Commission for having suppressed the material information regarding criminal case pending against him in his application for the recruitment.

2. i) The case of the petitioner is that he completed Bachelor of Law and was practising as an Advocate in the Madurai Bench of Madras High Court. While so, the 1st respondent invited application for direct recruitment to the vacancies in the post of Assistant Commissioner in the Tamil Nadu Hindu Religious and Charitable Endowments Administration Department. The petitioner came out successful in the written examination as well as in the interview and the result was published on 05.07.2012. The petitioner was asked to produce the medical certificate signed by Government Medical



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Officer and the petitioner also produced the same. While the petitioner was eagerly waiting for the appointment order, G.O.Ms.No.343 dated 17.10.2012 was issued appointing seven persons out of eight selected candidates, thereby leaving the petitioner from the list. When he enquired about the same with the Secretary, HR & CE Dept., it was informed that there is an investigation pending in Crime No.241 of 2013 on the file of Inspector of Police, Kenikkarai Police Station, Ramnad District, against the petitioner and that the police had given adverse report.

ii) Thereafter, the petitioner's file was sent to Department of Personnel and Administration Reforms, where they gave opinion that merely because that investigation was pending, the appointment of the candidate cannot be withheld without any material. Based on the said opinion, the petitioner's file was sent to the 1st respondent for approval even though, there is no necessity for any approval. The first respondent, without granting appointment, sought for an opinion from the Superintendent of Police, Ramanathapuram District. The said Superintendent of Police, by letter dated 26.06.2013, sent a report to the 1st respondent as if the petitioner



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was involved in the case in Crime No.241 of 2009 and investigation is still pending. This report was given in the year 2013, four years after the registration of the case in Crime No.241 of 2009. Therefore, the 1st respondent issued a memo dated 10.07.2013, directing the petitioner to explain why he has not mentioned about the criminal case pending against him in his application.

iii)The petitioner has not suppressed any facts before the 1st respondent either in his application or subsequently. He had stated in his application 'YES' to the question whether any criminal case was registered. The petitioner reiterates that he was not involved in any criminal case. The petitioner also gave a detailed representation to the 1st respondent about the investigation in the said Crime No.241 of 2009. There is no formal charge/accusation made against the petitioner. Not even a single piece of evidence has been collected against the petitioner by the police in spite of lapse of six years, since the registration of FIR.

iv) The 1st respondent, being satisfied with the explanation given by the petitioner, once again, called for the report from the Inspector of Police,



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Kenikarai Police Station, for which, the said Inspector had clearly stated in his report dated 31.01.2014 that the petitioner was not involved in the criminal case. The report of the Inspector of Police was forwarded to the 1st respondent vide communication dated 11.02.2014 and a copy of the same which is favourable to the petitioner was given to him. Whereas the copy of the report which is said to be adversely obtained which is not known to the petitioner, has not been given to him. Therefore, the petitioner was under the impression that he will be appointed.

v) The 1st respondent has passed the impugned order dated 17.09.2014 referring to an alleged report said to have been given by S.B.C.I.D., Ramanathapuram dated 14.07.2014, rejecting the petitioner's application for not satisfying the general instruction to the candidate, para 2(b) of the commission's instructions to the candidates. The said report was not received by the petitioner, though he had given representation to the 1st respondent seeking copy of the same. Challenging the order dated 17.09.2014, rejecting his application, the petitioner has filed W.P.No.11072 of 2015.



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vi) Thereafter, the petitioner cleared the Executive Officer Grade-I examination and working as Executive Officer Grade-I in the Tamil Nadu Hindu Religious and Charitable Endowments Department for the past two years. Based on similar grounds, the 1st respondent has issued show cause notice as to why the petitioner should not be terminated for having suppressed the material information regarding criminal case pending against him in his application. Challenging the show cause notice dated 17.02.2015, the petitioner has filed W.P.No.11494 of 2015.

3. Heard Mr.Isaac Mohanlal, learned senior counsel appearing for the petitioner, Mr.I.Abrar Md.Abdullah, learned Standing Counsel for 1st respondent/TNPSC and Mr.A.M.Ayyathurai, learned counsel appearing for the 2nd respondent.

4. i) Learned senior counsel appearing for the petitioner would submit that there is no criminal case pending against the petitioner before any competent forum. The petitioner's name is not found in the FIR. There is also no formal accusation before any court of law against the petitioner. The Inspector of Police, Kenikarai Police Station, has given a report dated



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31.01.2014, forwarded to the Superintendent of Police, Ramanathapuram District on 11.02.2014 stating that the petitioner is not involved in the criminal case in Crime No.241 of 2009. The 1st respondent is not the competent authority to issue the impugned order. The impugned order was passed only based on the report of S.B.C.I.D. dated 14.07.2019 which was not communicated to the petitioner, especially, when already there is a report by the Investigating Agency stating that the petitioner is not involved in the criminal case.

ii) Learned senior counsel would further submit that the case in Crime No.241/2009 has not crossed the stage of investigation and no cognizance has been taken when the petitioner submitted his application. Hence, the petitioner cannot state in his application either that the criminal case is pending or that he is punished. But bonafidely conveyed the fact that some investigation was pending by marking 'Yes' for the only option of case registered. The option given in the application is not clear and there is no space given for writing any explanation. The petitioner is not aware of any proceedings and he was neither summoned nor called for enquiry and



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therefore, there is no question of the petitioner stating in the application form that criminal case is pending against him. Learned senior counsel would further submit that the case in Crime No.241 of 2009 has been registered under section 25(1)(B)(a) of the Arms Act, 1959, and it is punishable for a term not less than one year but which may extend to three years. Since more than 6 years is over, the very cognizance of the case is barred by limitation under section 468 of the Criminal Procedure Code. Mere pendency of a criminal case, cannot lead to the conclusion of committing the offence. Just because an investigation in a criminal case is pending, appointment cannot be denied on the ground of 'character and antecedent'.

iii) Learned senior counsel would further submit that denying appointment to the petitioner based on the sole ground that an investigation is pending in which no admissible material whatsoever is produced against him, will amount to violation of his fundamental rights. The impugned order is based on surmises and conjectures arising out of a single incident and it reflects the non-application of mind. The petitioner cannot be made to



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suffer for his role in discharging his duty as an Advocate in furtherance of the fundamental right of the arrested persons. Originally, the 1st respondent issued memo dated 10.07.2013, requesting the petitioner to reply as to why he had not mentioned about the criminal case pending, whereas, the impugned order has been passed on the ground of antecedents and character, without giving an opportunity to make his explanation, which is violative of principles of natural justice. The attempt to terminate the petitioner on the ground of character and antecedent, as the petitioner is said to be involved in a criminal case, which is pending, that too, without being named either in the FIR or charge sheet or alteration report etc. without forming any opinion as to whether the petitioner is suitable to the post, amounts to violation of Article 14, 15 and 16 of the Constitution of India. The petitioner cannot even be said to be involved in the criminal case.

iv) Learned senior counsel also produced a certificate issued by the Inspector of Police Kenikarai Police Station, Ramanathapuram dated 31.01.2023, by way of additional typed set, stating that after investigation, it was found that the petitioner is not connected with the said Crime



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No.241/2009 and therefore, the charge sheet has been filed, discharging the case as against the petitioner. Therefore, he would pray that both the impugned orders dated 17.09.2014 and 17.02.2015 are liable to be quashed.

5. i) Per contra, the learned counsel appearing for the TNPSC would submit that the petitioner, in his application dated 04.05.2012 has categorically stated that a criminal case is registered against him. Therefore, originally, a show cause notice dated 10.07.013 was issued to him to explain about the criminal case pending against him in Crime No.241/2009. The SBCID, vide its report dated 14.07.2014 has specifically stated that the petitioner has been arrayed as an accused in the said crime number and therefore, the candidature has been rejected vide order dated 17.09.2014. In W.P.No.11494/2015, the petitioner has only challenged the show cause notice issued, since it was found that the petitioner had stated 'no' as against the column in the application regarding the query as to whether any criminal case is pending. The reason for arriving at such a conclusion by the TNPSC, based on the report given by SBCID, is after due deliberation and within the parameters for rejection of candidature, since the petitioner's character and



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antecedents has been considered for his suitability to the post of Assistant Commissioner/Executive Officer. The TNPSC also reserves its right to reject any candidature at any stage even after the selection has been made in terms of para 5(iv) of the instructions to candidates.

ii) Learned counsel would further submit that based on the report of SBCID dated 14.07.2014, the TNPSC has taken a conscious decision to reject the petitioner's candidature and has also issued the show cause notice under challenge for not satisfying the general instructions in para 2 (b) of the Commissioner's instructions to candidates and also based on Rule 12(b) of the Tamil Nadu State and Subordinate Service Rules. Therefore, the said rejection of candidature is completely in tune with the guidelines issued by the Hon'ble Apex Court in the case of Avtar Singh vs. Union of India and others reported in 2016(8) SCC 471.

iii) Learned counsel would further submit that the present attempt of the petitioner relying upon an unverified certificate of the Inspector of Police dated 31.01.2023 to say that the petitioner is not an accused, is irrelevant, for the reason that the materials that were available for the



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purpose of the decision making process, to reject the petitioner's candidature, were more than sufficient, and have not been controverted or put to challenge by the petitioner. Therefore, he would pray to dismiss both the writ petitions.

6. This Court, considered the submissions made on either side and perused the materials available on records.

7. Admittedly, the petitioner applied for direct recruitment to the post of Assistant Commissioner in the Tamil Nadu Hindu Religious and Charitable Endowments Administration Department and he came out successful in the written examination as well as in the interview and the result was published on 05.07.2012. But the appointment order was issued vide G.O.Ms.No.343 dated 17.10.2012, appointing only seven persons, out of eight selected candidates, leaving the petitioner from the list. It is learnt that the reason for not appointing the petitioner is that there is an investigation pending in Crime No.241 of 2013 on the file of Inspector of Police, Kenikkarai Police Station, Ramnad District, against him and the police had given adverse report against him.



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8. It is the case of the petitioner that initially, he was a practising Advocate and one Muniyasamy, a close relative of one Karthick approached the petitioner and instructed to file an Anticipatory Bail before this Court and he filed CrI.O.P.No.2996 of 2009 for him and this Court granted anticipatory bail to Muniyasamy. Unable to apprehend the petitioner's client Muniyasamy, the Inspector of Police, Kumuthi Police Station, Ramanathapuram District, had vengeance against the petitioner. The petitioner, being a practising Advocate was facing threat of foisting criminal case against him. It is also the case of the petitioner that the prosecution foisted a case as if the accused Karthick had given a confession statement stating that his possession of country made revolver was known to his relative Muniyasamy and the petitioner. Therefore, the petitioner filed anticipatory bail petition and the same was ordered by this Court.

9. No doubt, verification of character and antecedents is one of the important criteria to assess the suitability and it is open to the employer to adjudge antecedents of the incumbent but ultimate action should be based upon objective criteria on due consideration of all relevant aspect. In the



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case on hand, the petitioner is not shown as an accused in the charge sheet.

10. Perusal of the records shows that no evidence has been collected against the petitioner by the police inspite of lapse of six years, since the registration of FIR. Actually, the petitioner has not suppressed any facts before the 1st respondent either in his application form or subsequently. He had stated 'yes' to the question whether any criminal case was registered, since he had filed anticipatory bail and obtained an order. Only in the column, whether any criminal case is pending, he had stated 'no', since no case was pending against him as his name was not found in the FIR and no summons was served on him. It is also brought to the notice of this court that now charge sheet has been filed in the aforesaid criminal case and his name does not find place in the charge sheet also.

11. Further, it is seen that the impugned order dated 17.09.2014 was passed by the 1st respondent, based on the report said to have been given by S.B.C.I.D., Ramanathapuram dated 14.07.2014. But a copy of the said report was not given to the petitioner, though the petitioner had given representation to the 1st respondent seeking the same. This report was not



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mentioned in the show cause notice issued to the petitioner. Thus, the final order was passed beyond the reason what is stated in the show cause notice.

11. Only on the confession statement made an accused, the petitioner was involved in a criminal case and this aspect alone, cannot be a ground for rejecting the case of the petitioner. The criminal case indeed, was not at all proved by any material evidence. Further, the Inspector of Police by letter dated 31.01.2023 had stated that the petitioner is not an accused and thus, he was not arrayed as an accused in the charge sheet also.

12. For the foregoing discussions, this Court is of the opinion that the petitioner has not suppressed any material facts and he is entitled for the relief claimed in both the writ petitions. Therefore, both the impugned orders dated 17.09.2014 and dated 17.02.2015, are quashed. The Writ Petitions are allowed. At the time of admission, this Court has passed an order directing the 1st respondent to keep one post of Assistant Commissioner of H.R.& C.E Department, vacant until further orders. In view of the said order, the respondents are directed to consider the petitioner for the said post within a period of twelve weeks from the date of receipt of



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a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.04.2023

Index :Yes/No
Speaking/Non-speaking order
vsi

To

1. The Secretary,
Tamil Nadu Public Service Commission,
VOC Street, Park town,
Chennai .
2. The Deputy Secretary,
Tamil Nadu Public Service Commission,
VOC Street, Park town,
Chennai .
3. The Secretary,
Personnel and Administrative Reforms Department,
St.George Fort,
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vsi

Pre-delivery order made in
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