



W.P. No. 7852 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 7852 of 2023

C. Prabhu

... Petitioner

-VS-

Tamil Nadu Public Service Commission,
Representation by its Secretary,
Frazer Bridge Road,
V.O.C Road,
Chennai – 600 003.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the Respondent relating to the impugned Memorandum dated 02.02.2023 bearing Memorandum No. 694/OTD-A4/2020 and quash the same as illegal and arbitrary and consequently, direct the Respondent to appoint the Petitioner in the post of Assistant Public Prosecutor, Grade – II in the Tamil Nadu General Services 2021-2022.

For Petitioner : Mr. N.U.Pressanna

For Respondent : Mr. R.Bharanidharan



W.P. No. 7852 of 2023

WEB COPY

ORDER

Heard Mr. N.U.Pressanna, Learned Counsel for the Petitioner and Mr. R.Bharanidharan, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who had made an online application for the post of Assistant Prosecutor Grade-II in furtherance to the Notification No. 10 of 2021 dated 25.08.2021 published by the Respondent, has challenged the proceedings in Memorandum No.691/OTD-A4/2020 dated 02.02.2023 passed by the Respondent rejecting the candidature of the Petitioner, which reads as follows:-

“1) The Educational and other Qualifications (as on 25.08.2021) prescribed for the said post in paragraph 4(B) of the Notification dated 25.08.2021 based on the sub-section 7 of Special rules of Assistant Public Prosecutor, Grade – II, is as follows:-

(i) Must possess B.L. Degree

(ii) Must be a member of the Bar

(iii) Must possess adequate knowledge of Tamil

and



WEB COPY



W.P. No. 7852 of 2023

(iv) *Experience: Must have had active practice in 'Criminal Courts' for a period of not less than five years.*

2) *In view of the above para, one of the prescribed qualifications is that the candidate "**must be a member of the Bar**" on the date of said Notification, i.e., 25.08.2021.*

3) *The petitioner candidate Thiru. C.Prabhu (Reg.No.1001001101) in his online application has stated that he had enrolled as an Advocate on 11.09.2008 and had been continuously practising from 11.09.2008 to 27.06.2019 i.e., for a period of 10 years and 8 months. However, it has been mentioned in the experience certificate as well as in the online application that he is working as 'Translation Officer' in State Official Language (Legislative) Commission from 28.06.2019 to till date. In support of his claim, he has also uploaded NOC in his online application.*

4) *During the Certificate Verification held on*



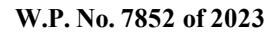
W.P. No. 7852 of 2023

WEB COPY

01.12.2022, the Petitioner candidate Thiru.C.Prabhu has submitted a letter dated 01.12.2022 declaring that during the period of employment, he has not suspended his practice with Bar Council of Tamil Nadu as per Act and seeking permission to appear before Bar Council of Tamil Nadu to suspend his Bar practice.

5) According to Rules 43 and 49, Chapter IVA, Part VI of the Bar Council of India Rules, the said petitioner candidate who is working in State Official Language (Legislative) Commission under the purview of the State Government, must intimate the fact to the Bar Council and cease to practice as an Advocate so long as he continues in such employment.

6) But the petitioner candidate has not intimated about his employment to the Bar Council as required in the Act as stated above and he has not voluntarily suspended his practice by surrendering the Original Enrolment Certificates with the Bar Council as it was mandatorily



9) Under Article 320 of the Indian Constitution, the



W.P. No. 7852 of 2023

WEB COPY

Commission has been empowered to regulate the norms for the qualification of the candidates and eligibility of candidates to the posts which is prescribed in the special service rules concerned.

10) As per para 13(a) of Commission's Notification his admission to eligibility all stages of examination is provisional, subject to his satisfying the eligibility conditions. Mere admission to the Written examination/Certificate Verification/Oral Test/Counselling or inclusion of name in the selection list will not confer on the candidate any right to appointment. The candidature is therefore, 'Provisional' at all stages and the Commission reserves the right to reject candidature at any stage, even after selection has been made, if a wrong claim of violation of rules or instruction is confirmed. Therefore, the request of the petitioner to select him to the post of Assistant Public Prosecutor, Grade-II in Prosecution Department cannot be complied with.



W.P. No. 7852 of 2023

WEB COPY

11) Further, as per para 9 of Notification dated 25.08.2021, Final selection will be made on the basis of total marks obtained by the applicants in the Main Written Examination and oral test taken together subject to the rule of reservation of appointments. Applicant's appearance in the Main Written Examination and Oral Test Is compulsory. Even the applicant who has not appeared for any of the papers in the Main Written Examination will not be considered for selection even if he/she secures the minimum qualifying marks for selection. In this case, as his application was rejected on the day of Oral Test, and not allowed to attend the Oral Test, he cannot be considered for selection to the post of Assistant Public Prosecutor, Grade-II in Prosecution Department.

12) The petitioner is also informed that the selection for the said recruitment has been finalised on 22.12.2022 itself through the method of Counselling from among the



W.P. No. 7852 of 2023

WEB COPY

eligible candidates who have rightly applied with eligible qualifications, and there are no vacancies available. The petitioner who is an ineligible candidate with reference to the Notification cannot defy the rights of eligible candidates.

Hence, his representation could not be complied with.”

It is beyond cavil that a candidate must be a member of the Bar on the date of the notification, meaning thereby that after the enrollment in the Bar Council of the concerned State, he should be practising as an Advocate on the date of the said notification. Though the Petitioner had enrolled as an Advocate on 11.09.2008 and had been continuously practicing till 27.06.2019, it is not in dispute that he had been appointed to the post of Translation Officer in the Law Department of the Government of Tamil Nadu in furtherance to Letter No. 589/S/P/OP-III/2019-1 dated 24.06.2019 and has been posted in the Official Language Commission deriving full time salary, and by securing such employment, he had ceased to practice as an Advocate from then onwards even without formally suspending his practice or giving any intimation of that fact to the Bar Council of the State.



W.P. No. 7852 of 2023

WEB COPY

3. It is the mandate of the Rule 49 of the Bar Council of India Rules that an Advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment. The mere circumstance that the Petitioner had not given any intimation of suspension of practice to the Bar Council of the State despite having been employed as 'Translation Officer' in the services of the Government of Tamil Nadu from 27.06.2019 onwards, cannot confer any right on him to be treated as if he was continuing as a practicing Advocate on the date of notification published by the Respondent. In ***Panchugopal Barua -vs- Umesh Chandra Goswami*** (AIR 1997 SC 1041), the Hon'ble Supreme Court of India has commented as follows:-

“A court of equity, it should be remembered, must so act as to prevent perpetration of a legal fraud. It is expected to do justice by promotion of honesty and good faith, as far as it lies within its power. A party seeking relief in equity must come to court with clean hands.”



W.P. No. 7852 of 2023

The legal maxim '*jus ex injuria non oritur*' postulates that a right cannot arise out of a wrong doing, and it becomes applicable in a case like this, where the Petitioner has been invigorated to even take advantage of it to suit his convenience, which cannot be countenanced. The equitable jurisdiction of this Court under Article 226 of the Constitution cannot be exercised in favour of such person.

4. In the result, the Writ Petition, which does not deserve to be entertained, is dismissed. No costs.

15.03.2023

skr

Index: Yes/No

Neutral Citation: Yes/No

Note: Issue order copy by 31.07.2023

To

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C Road,
Chennai – 600 003.



WEB COPY



W.P. No. 7852 of 2023

P.D. AUDIKESAVALU, J.

skr

W.P. No. 7852 of 2023

15.03.2023