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W.P.No.30493 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

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THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P.No.30493 of 2014

P.M.Santhi

... Petitioner

-Vs-

1. Tamil Nadu Public
Service Commission,
Rep. by its Secretary,
Chennai – 600 003.

2. Kulandaivelu
(R2 Suo Motu impleaded vide
order dated 08.03.2023 made
in W.P.No.30493 of 2014)

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Ceriorari, calling for the records of the respondent notice in Memo No.09107272/PSD-D3/2014 dated 31.10.2014 and quash the same.

For Petitioner : Mr.Vijay Shankar

For Respondents : Mrs.G.Hema
Standing Counsel for TNPSC for R1

ORDER

This writ petition has been filed to call for the records of the respondent notice in Memo No.09107272/PSD-D3/2014 dated 31.10.2014 and quash the



same.

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2. The facts of the case in a nutshell:-

The respondent called for online application for the Group IV examinations to be held on 07.07.2012, the petitioner made online application dated 23.05.2012 and the examination was held on 07.07.2012. The petitioner was declared successful and called for counselling on 19.12.2012 and she comes under BC quota which is not disputed. Thereafter the respondent issued an appointment order and allotted to the Panchayat Union at Karur and the appointment order dated 11.02.2013 was issued by the PA to the District Collector, Karur and the petitioner joined the service on 13.02.2013. The petitioner was sent for computer training which was successfully completed by her on 22.02.2013 and subsequently appeared for the departmental exam held on May 2013 and December 2013 and cleared all the papers. While so the respondent has issued the impugned notice dated 31.10.2014 which was received by the petitioner on 08.11.2014 and the petitioner was asked to respond why the selection should not be cancelled as she has suppressed the memo No.193/BST-B6/08 dated 17.02.2009 issued by the second respondent debarring the petitioner from appearing for the examination conducted by the TNPSC and that it was not indicated in the online application and was not



disclosed during the counseling. Aggrieved by the above show cause notice dated 31.10.2014 issued by the respondent the petitioner has come forward with the present writ petition.

3. The learned counsel for the petitioner submitted that there is no column to mention that the petitioner was debarred by the respondent/TNPSC. In the online application she has submitted that she is not a Destitute Widow and applied only in general category. Then the petitioner was appointed by the P.A to the District Collector Karur District vide proceedings Na.Ka.Pa.Va 4/6060/2012-5 dated 11.02.2013 appointing the petitioner as Junior Assistant at District Collectorate development section Karur in the existing vacancy. The petitioner has applied only in open category. He further submitted that the petitioner has applied and competed only in general category and got selected for the post of Junior Assistant. The respondent in the show cause notice dated 31.10.2014 has mentioned why her selection should not be cancelled and was asked to give explanation within a period of 15 days that is on or before 15.11.2014. The learned counsel for the petitioner relied upon the judgment of of the Hon'ble Apex Court in the case of *Avtar Singh Vs Union of India and others* reported in (2016) 8 SCC 471. The relevant portion is extracted hereunder:-



“38.10 For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for”.

and also in another judgment of the Hon'ble Supreme Court in the case of *Secretary, Department of Home Secretary, Andhra Pradesh and others Vs B.Chinnam Naidu* reported in (2005) 2 SCC 746. The relevant portions are extracted hereunder:-

“8. In order to appreciate the rival submissions it is necessary to take note of column 12 of the attestation form and column 3 of the declaration. The relevant portions are quoted below:

“Column 12 – Have you ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offence whether such conviction sustained in court of appeal or set aside by the appellate court if appealed against”.

“Column 3 – I am fully aware that furnishing of false information or suppression of any actual information in the attestation form would be a disqualification and is likely to render me unfit for employment under the Government”.

9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a court or detention under any State/Central



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preventive detention laws is different from arrest in any case or pendency of a case. By answering that the respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far column 12 is concerned the respondent cannot be found guilty of any suppression.”

4. The learned counsel for the petitioner further relied upon the judgment of this Court in the case of ***E.Manoj Kumar Vs Tamil Nadu Public Service Commission, Chennai*** in W.A.No.1280 of 2019 dated 10.04.2019 and the relevant portions are extracted as below:-

“27 (a). The learned Senior Counsel for TNPSC cited a decision of the Division Bench in Dr.M.Vennila Vs. Tamil Nadu Public Service Commission rep. by Deputy Secretary, 2006(3) CTC 449, in support of his contention that the instructions to the candidates are part of the application form and even in the absence of a particular column in the format, the candidates must answer correctly in case the instruction throws light on the subject.

30. In order to disclose the correct employment, there should be a specific column in the application form. Though 15(g) and 19(4) (ii) of the instructions contain not only Government service but other services also,



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the fact remains that the relevant column in the application form contain only one service for disclosure viz., “Government service”, it would not be possible for a Bank employee to record that he is a Government employee. In case such a declaration of service status is given by a Bank employee indicating that he is a Government servant, he would face the disqualification/debarment in view of clause 19 of the instructions.

31. The appellant very correctly indicated that he is not a Government employee. However, his candidature was rejected. The other local body employees and Bank employees who have recorded as if they belong to Government service were not subjected to any such disqualification. If we go by the tenor of the question, “Are you a Government employee”, the Bank employees who are claiming that they are Government employees would suffer disqualification, as they have given a wrong statement. We therefore reject the contention taken by TNPSC on the basis of clause 19 of the instructions”.

5. The learned counsel further submitted that the order dated 17.02.2009 debarring the petitioner from appearing in any examinations conducted by the TNPSC was challenged in W.P.No.8030 of 2009 and this Court was pleased to grant interim stay on 28.04.2009 and the same was made absolute on 13.08.2021. In view of the above stay order the petitioner is working for the last 10 years in a stagnated post without any further promotion due to the pendency of the writ petition. The learned counsel for the petitioner further submitted that since debarring order was stayed by this Court it will not come into effect and the same has been kept in abeyance. Hence the impugned order passed by the first respondent is liable to be quashed and the writ



petition should be allowed.

6. The learned Standing Counsel for the first respondent filed a counter affidavit and drew the attention of this Court to paragraph No. 6 of the counter affidavit which is extracted as below:-

“6. In the subsequent application i.e., for the Group-IV 2007-2008 to 2012-2013 recruitment though there is no provision in the online application regarding debarment, however there is a caption under the heading 'Declaration' in which against column 7, the candidate has certified that, “I have not been debarred by the TNPSC” and she had signed the said Declaration on 23.05.2012 while applying for this recruitment. This shows that she had deliberately given a false declaration hiding the fact of her debarment by the TNPSC for the post of VAO-2006 recruitment. Further, even at the time when she was called in person for certificate verification, she should have informed the fact of her debarment which she did not reveal. Her motive is to deceive the Commission”.

7. The learned Standing Counsel further submitted that though there is no column or provision in the online application but in the declaration column No.7 she has certified that she was not debarred by the TNPSC this amounts to suppression of the fact by the petitioner. Hence the show cause notice dated 31.10.2014 was issued to the petitioner is proper, justified and sustainable in law and prays for dismissal of the writ petition.



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8. Heard both sides and perused the materials available on record.

9. The main contention of the learned counsel for the petitioner is that there is no column to mention that she has been debarred by the TNPSC and in the column No.7 of the undertaking certified that she is not debarred by the TNPSC or any other recruitment agency is correct for the reason that the order issued by the respondent dated 17.02.2009 debarring the petitioner from appearing in the examinations conducted by the TNPSC **has been stayed by this Court on 20.08.2009 and was made absolute on 13.08.2021 and is in force till date. Hence it cannot be construed that the petitioner has suppressed the fact while applying for the Group IV post for the reason that once the interim stay is granted the operation of that order is stayed, kept in abeyance and not in force. Hence the petitioner has rightly certified that she is not debarred by the TNPSC in column No.7 of the undertaking of the application. It is pertinent to note that the petitioner has applied only on general quota and it is evident from the application submitted by the petitioner dated 23.05.2012 that the petitioner has applied only in open category and not in destitute widow category and the relevant portion is extracted as hereunder:-**

“Are you a Destitute Widow? : No”



So the selection of the petitioner is purely based on her merit, ability and competency and not on any quota. The question of suppression of fact that petitioner has been debarred from appearing in the examinations does not arise for the reason the debarring order was issued by the TNPSC is only based on the order passed by the Revenue Divisional Officer Namakkal district Thiruchengode dated 23.02.2008 cancelling the destitute widow certificate based on which certificate the petitioner was provisionally selected for the post of VAO but not appointed in view of the cancellation of the destitute widow certificate.

10. The first selection of the petitioner by the Tamil Nadu Public Service Commission in the year 2006 and the present selection was in the year 2012 which is the subject matter in the present writ petition.

11. The petitioner applied for the selection in the year 2006 under “Destitute Widow Quota” but for the present selection applicant applied only under general quota.

12. It can be seen in the application form that there is no column to mention that the petitioner has been debarred for which the learned counsel for



the petitioner relied on the judgments of the Hon'ble Apex Court and the Hon'ble Division Bench of this Court.

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13. There is no need to mention for the reason the debarring order has been stayed by this Court on 20.08.2009 and the same is in force till date i.e., for the last 14 years and no steps have been taken by the respondent Commission.

14. In view of the above factum of the case and the ratio laid down by the Hon'ble Apex Court and the Hon'ble Division Bench of this Court and the order passed by this Court in W.P.No.8030 of 2009, the impugned order/show cause notice issued by the first respondent dated 31.10.2014 is liable to be quashed and the same is hereby quashed.

15. In the result, this writ petition is allowed with a direction to the first respondent to regularise the petitioner and grant annual increments and promotion on par with her juniors along with all consequential benefits within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is also closed.

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J. SATHYA NARAYANA PRASAD, J.

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