



WEB COPY

W.P.No.10538 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.10538 of 2015

and

M.P.No.1 of 2015

N.Senthil Kumar

... Petitioner

Vs.

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

2. The Assistant Director,
Survey and Land Record,
Namakkal District, Namakkal.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to Memorandum No.12105005/PSD-C1/2013 dated 24.03.2015 of the first respondent and quash the same and consequently direct the first respondent to allow the petitioner to continue as 'Field Surveyor' in the second respondent office with attendant benefits.

For Petitioner

:Mr.K.Venkatramani, Senior Counsel
assisted by Mr.D.Vairamoorthy
for S.Senthil

For R1

: Ms.G.Hema, Standing Counsel



WEB COPY

W.P.No.10538 of



For R2

: Mr.P.Ganesan,
Additional Government Pleader
ORDER

This writ petition has been filed seeking a writ of certiorarified mandamus to call for the records pertaining to Memo No.12105005/PSD-C1/2013, dated 24.03.2015, whereby the Respondent No.1 cancelled the selection of the petitioner for the post of 'Group IV Services'. while rejecting the application of the petitioner.

2. The brief facts that are relevant for disposal of this writ petition are as under:

2.1. In response to the notification issued by the Respondent No.1/ Tamil Nadu Public Service Commission, the petitioner submitted an application dated 30.05.2012 for the 'Group IV Services' and accordingly, the petitioner was selected and appointed as 'Field Surveyor' in the office of the Respondent No.2 by an order dated 18.01.2013. The probation was also declared by an order dated 25.04.2013 and thereafter, his services were also regularized through proceedings bearing ந.க.அ4/1058/2014, dated 19.03.2014. While so, the Respondent No.1, on having received a complaint, issued a show-cause notice dated 10.12.2014 stating that the petitioner has



WEB COPY

suppressed the information pertaining to his involvement in three criminal cases viz., Crime Nos.2, 140 and 278 of 2010 and the said suppression was found to be willful suppression of the petitioner and therefore, he was required to show-cause as to why he should not be debarred permanently from appearing for any of the Commission's examinations and selections, besides rejection of his application in respect of the selection, which was already over and resulted in appointment of the petitioner as 'Field Surveyor' in the office of the Respondent No.2.

2.2. It was thereafter, the petitioner submitted his explanation stating that the petitioner was already acquitted in Crime No.2 of 2010 as early as on 10.01.2012, holding him as innocent and whereas, the Crime No.140 of 2010 is concerned, the said crime was already closed as 'mistake of fact'. Insofar as Crime No.278 of 2010 is concerned, he submitted that the petitioner is unaware about the registration of the said crime as on the date of submission of the application for the selection in question.

3. The Respondent No.1, after having received the explanation from the petitioner, passed the impugned order dated 24.03.2015, referring to



the contents of the the show-cause notice and by making a simple reference to the explanation submitted by the petitioner and stating that the reply given by the petitioner is not satisfactory. Except stating that the explanation submitted by the petitioner is not satisfactory, there is no other reason that is furnished in the impugned order as to on what ground the Respondent No.1 is not satisfied with the explanation submitted by the petitioner. The explanation submitted by the petitioner is not at all considered by the Respondent No.1 while passing the impugned order and the same is evident from the impugned order itself. Therefore, the impugned order is liable to be quashed solely on the ground of sheer non-application of mind of the Respondent No.1

4. Be that as it may, the selection of the petitioner was already concluded by the Respondent No.1, as early as in the year 2012, and the selection list was accordingly communicated to the Government resulting in appointment of the petitioner as 'Field Surveyor' by an order dated 18.01.2013. His probation was declared and his services were also regularized on 25.04.2013 and 19.03.2014 respectively. Thus, the role of the Respondent No.1 had come to an end once the selection list was



communicated to the Respondent No.2. Even in case, if any complaint is received by the Respondent No.1 after the selection process is over, it is for the Respondent No.1 to communicate such information to the concerned appointing authority for taking appropriate action. The question of cancelling the selection or candidature of the petitioner or rejecting the application that was already submitted by the petitioner, that too after the entire selection process is over, is totally impermissible as the Respondent No.1/ TNPSC is *functus officio* once the recruitment process is concluded.

5. Though Ms.Hema, learned Standing Counsel appearing for the Respondent No.1 placed reliance on the Rules of procedure to be followed by the TNPSC viz., Tamil Nadu Public Service Commission Rules of Procedure, and drawn the attention of this court to Rule 4(A)(x) and (xi), which provides for debarment or other punitive action against any application for the post advertised by the Commission or a candidate appearing at a competitive exam conducted by the Commission and also for deletion of the names of candidates recommended for appointment to any post, on account of violation of Rules/ Commission's instructions etc., a perusal of the said Rules shows that the same confers power on the Respondent No.1/ TNPSC to cancel the



WEB COPY

candidature or to delete the names of the candidates recommended for appointment to any post. But here is a case where the petitioner was already appointed as early as on 13.01.2013 and his services were also regularized. Therefore, after the entire process is over and the selected candidate was already appointed, the question of cancelling the candidature at that stage does not arise. There is no specific power conferred upon the Respondent No.1/ TNPSC to cancel the candidature of any candidate, who was already selected and appointed or to reject the application of such candidate at a stage after the appointment was over.

6. Be that as it may, the scope and ambit of cancelling the selection/ appointment in the matter of suppression of fact has fallen for consideration before the Hon'ble Apex Court in the case of "**Avtar Singh -vs- Union of India and others**" reported in (2016) 8 SCC 471, whereas it was held as under:-

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after



entering into service must be true and there should be no suppression or false mention of required information.

38.2. *While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.*

38.3. *The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

38.4. *In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:*

38.4.1. *In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.*

38.4.2. *Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.*

38.4.3. *If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.*

38.5. *In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*



38.6. *In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.*

38.7. *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

38.8. *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

38.9. *In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

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.*

38.11. *Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."*

7. From the perusal of the above, it is evident that the allegation of suppression of fact has come up for consideration before this court or any



WEB COPY

other judicial forum, the matter is required to be examined in an objective manner and at Paragraph No.38.4.1, the Hon'ble Apex Court held that, for a petty offence, which if disclosed would not have rendered an incumbent unfit for the post in question, and in such circumstances, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

8. In the instant case, all the three offences that are shown to have been registered against the petitioner, on the face of it, appears to be trivial in nature and not of a serious nature involving moral turpitude conviction or otherwise and all the three criminal cases also have ended in favour of the petitioner. The Respondent No.1, while considering the explanation submitted by the petitioner, ought to have examined the same in the light of the law laid down by the Hon'ble Apex Court including the nature of offence in which the petitioner was involved. Instead of considering the same in an objective manner, the Respondent No.1, in a mechanical manner concluded that the petitioner has suppressed the facts. Whether the action of the petitioner in not mentioning about his involvement in the criminal cases would really amount to suppression or wilfull suppression etc., is required to



be considered by the Respondent No.1. None of such steps have been taken by the Respondent No.1, while considering the explanation submitted by the petitioner.

9. The contention of Ms.Hema, learned Standing Counsel appearing for the Respondent No.1, by placing reliance on a decision of the learned Division Bench of this court in W.A.No.2075 of 2022 dated 02.08.2024, and that the *Avtar Singh's* case was also duly taken into consideration by the learned Division Bench is concerned, this court has thoroughly gone through the order passed by the learned Division Bench of this court in W.A.No.2075 of 2022 dated, 02.08.202, especially Paragraph 38 of the said decision, wherein the learned Division Bench referred to a *Avtar Singh's* case and considered Paragraph No.38.4. As a matter of fact, nothing is decided in Paragraph No.38.4 but enumerated various circumstances and the manner in which the alleged suppression or involvement in the criminal case is to be considered by the employer who proposed to terminate the services of an employee.



WEB COPY

10. As already observed above, at Paragraph No.38.4.1, the Hon'ble Apex Court laid down the criteria and the manner in which the suppression and involvement of a candidate in a criminal case or the punishment that was imposed in any such criminal case is to be considered. The learned Division Bench has not taken into consideration the Paragraph No.38.4.1 nor assigned any reason for not taking into consideration the said paragraph from the *Avtar Singh's* case. As the decision of the Hon'ble Apex Court in the *Avtar Singh's* case is very clear and unambiguous, this court is of the considered view that this court is bound by the law laid down by the Hon'ble Apex Court under Article 141 of the Constitution of India and therefore, this court is of the considered view that it would be appropriate to follow the decision of the Hon'ble Apex Court, instead of the decision of the learned Division Bench relied upon by the learned Standing Counsel appearing for the respondents.

11. Further, it is also necessary to note that, by virtue of the impugned order, the right to life and right to employment of the petitioner is sought to be affected while affecting the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India. The Respondent



WEB COPY

No.1 is expected to act diligently and with all care and caution. But in the instant case, nothing of that sort is seen from the impugned order. The mistake or omission on the part of the petitioner in suppression of his involvement in the criminal case put against the right to life of the petitioner, in the considered view of this court, the right to life would prevail, but not a trivial suppression of fact.

12. Taking into consideration the above aspects and also the fact that the petitioner was already appointed as early as on 18.01.2013 and his services were also regularized and further also stated to have been further promoted and has been continuing in service for the past about 11 years, this court is of the considered view that it is a fit case where the impugned order is liable to be quashed and accordingly, the impugned order bearing Memorandum No.12105005/PSD-C1/2013 dated 24.03.2015 is quashed.

13. Accordingly, the writ petition is allowed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

17.12.2024

skr



W.P.No.10538 of



Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

WEB COPY

To

1. The Secretary, Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C Nagar,
Park Town, Chennai – 600 003.
2. The Assistant Director,
Survey and Land Record,
Namakkal District, Namakkal.

MUMMINENI SUDHEER KUMAR, J.

skr



WEB COPY

W.P.No.10538 of



W.P.No.10538 of 2015

17.12.2024