



W.A.No.2075 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.2075 of 2022
and
C.M.P.No.15662 of 2022

The Member Secretary,
Tamil Nadu Public Service Commission,
Frazer Bazaar Street, VOC Nagar,
Park Town, Chennai-600 003.

... Appellant

Vs.

1.M.Thayanithy

2.The State of Tamil Nadu,
rep. by is Secretary,
Home Department,
Fort St.George,
Chennai-600 009.

3.The Director General of Police cum
Inspector General of Prisons,
Venals Road, Egmore,
Chennai – 600 008.

... Respondents



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Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order passed by this Hon'ble Court in W.P.No.21823 of 2019 dated 15.11.2021 by allowing this Writ Appeal with costs.

For Appellant : Mr.P.Wilson, Senior Counsel for
Ms.G.Hema, Standing Counsel for TNPSC

For Respondents : Mr.K.Venkata Ramani, Senior Counsel for
Mr.M.Muthappan (for R1)

: Mr.S.John J.Raja Singh,
Additional Government Pleader
(for R2 & R3)

J U D G E M E N T

(Judgement of the Court was delivered by S.M.Subramaniam J.)

The intra Court appeal has been instituted by the Tamil Nadu Public Service Commission challenging the writ order dated 15.11.2021 in W.P.No.21823 of 2019.

2. The facts in nutshell for consideration are that a recruitment notification dated 09.03.2016 was issued inviting applications from the



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eligible candidates for appointment to the post of Assistant Jailor in Prison Department in the Tamil Nadu Jail Subordinate Services. 104 vacancies were notified. The main written examination was held on 24.07.2016. The oral test was held on 15.11.2017 and 16.11.2016. The selection was finalised on 05.12.2017. The list of selected candidates had been forwarded to the head of the Department of the Jail Department on 11.12.2017 for issuance of appointment order to the selected candidates.

3. The second phase of certificate verification was held on 26.07.2017. At the time of certificate verification, the authorities found, from the on-line application submitted by the first respondent, that he had filled in the column: “whether criminal case is registered” as “NO”. The Tamil Nadu Public Service Commission issued a show cause notice on 22.06.2019. The show cause notice issued by the Commission states that the first respondent had not intimated the material fact relating to his involvement in a criminal case, which admittedly ended with an order of acquittal. Pertinently, the show cause notice was issued by the Tamil Nadu Public Service Commission, in view of the order passed by the Director General of Police / Inspector General of Police in proceeding dated 01.04.2019.



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4. The first respondent earlier filed W.P.(MD) No.6579 of 2018, challenging the order passed by the Additional Director General cum Director General of Prisons, in proceeding dated 12.03.2018. The said letter would indicate that the first respondent had involved in a criminal case in Tallakulam Police Station, Madurai city, in Crime No.1316 of 2011, under Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, read with 34 IPC. Based on the involvement of the first respondent in a criminal case, the Additional Director General and the Inspector General of Prisons formed an opinion that the character and antecedent of the first respondent is not satisfactory. The said order came to be challenged in W.P.(MD) No.6579 of 2018 and the learned Single Judge of Madurai Bench of Madras High Court quashed the said order and directed the respondents therein to reconsider the case of the petitioner afresh in the light of the judgement rendered in S.C.No.47 of 2013 where the first respondent was tried as second accused and found not guilty. Further clarification was issued by the Writ Court that the meaning and impact of the term “honourable acquittal” and the principles laid down to deal cases of suppression of facts at the time of application, shall be taken into consideration. The process of re-considering the eligibility of the first



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respondent, for the post of Assistant Jailor, as stated above, shall be completed within a period of three months. The impact of the acquittal is also directed to be taken into consideration by the respondents therein.

5. Pursuant to the order dated 27.11.2018 in W.P.(MD)No.6579 of 2018, the Director General of Police / Inspector General of Prisons passed final orders on 01.04.2019, holding that the first respondent has suppressed relevant and vital information with reference to his involvement in a criminal case and knowingly furnished a false declaration for getting appointment as Assistant Jailor. The suppression and false declaration reveals that the petitioner would not fit into a disciplined force where every member is expected to honestly and sincerely report the information, coming to the knowledge, in the public interest. It is further stated that considering bad antecedent and bad character in suppressing the truth and furnishing false information, the first respondent could not be appointed to the post of Assistant Jailor.

6. In paragraph no.8 of the order dated 01.04.2019, the Inspector General of Prisons had stated that the candidate who suppressed the



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material fact at the initial stage of submitting an application for recruitment to the post of Assistant Jailor, is not entitled for getting appointment to the said post of uniformed services. Recruitment to the post of Assistant Jailor in Uniformed services and any leniency or misplaced sympathy in this regard by the authority, will jeopardize the administrative system, more specifically the uniformed services.

7. Based on the said order, the Tamil Nadu Public Service Commission issued the show cause notice dated 22.06.2019. The show cause notice, along with the order of the Director General of Police cum Inspector General of Prison, are challenged in W.P.No.21823 of 2019, which was allowed by the learned Single Judge, against which the present writ appeal has been instituted by the Tamil Nadu Public service Commission.

8. The learned Senior Counsel, Mr.P.Wilson, appearing on behalf of the appellant would submit that the Writ Court has proceeded on erroneous pretext that the nature of acquittal in criminal case is to be considered and the learned Single Judge of Madurai Bench of Madras



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High Court held that the criminal case ended with an honourable acquittal.

Therefore, the case of the first respondent is to be considered afresh.

During the second round of litigation also, the Writ Court has not considered the fact that the first respondent suppressed the material information in the application which led to rejection of his candidature and appointment to the post of Assistant Jailor. A candidate who suppressed the material fact in the application form is not entitled for appointment.

The learned Single Judge, in the impugned writ order, made a finding that the petitioner cannot be denied appointment though it was incumbent on the part of the petitioner to have disclosed the information in the application notwithstanding a gap in the rules. Though the suppression of fact was the material suppression within the meaning of Clause 19 of the instructions of the Tamil Nadu Public Service Commission to the applicants, yet it was not fatal to the case of the first respondent as the petitioner was not charged with any serious offence and was declared an honourable acquittal by the criminal Court.

9. Taking exception on such an observation made by the Writ Court,

Mr.P.Wilson, the learned Senior Counsel would urge that such a finding is



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running counter to the service rules and more so, an order of acquittal in a criminal case is no way connected with the material information suppressed in the application by the candidate. A candidate in the application is expected to furnish true information to the Commission. Once the decision is taken, rejecting the candidates on the ground that the material informations are suppressed, question of going into the nature of acquittal granted in the criminal case would not arise at all. Thus, the writ Court proceeded with the case under an irrelevant premises and thus, the writ appeal is to be considered.

10. Mr.P.Wilson would point out that the instructions provided along with the application form by the Tamil Nadu Public Service Commission, indicates that the applicant has given a declaration as follows:

“I hereby declare that all the particulars furnished in this application are true, correct and complete to the best of my knowledge and belief. In the event of any information being found false or incorrect, or ineligibility being detected before or after examination, action can be taken against me by the TNPSC”



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11. Further the declaration form indicates that *“I have gone through 'the instructions to the candidates' and the commission's notification for this recruitment before filling up the application form.”*

12. Pertinently, the Notification No.6 of 2016, dated 09.03.2016, issued by the Tamil Nadu Public Service Commission, Clause 6(I) reads as under:

“Correct and true information regarding arrest, convictions / debarment / disqualification by any recruiting agency, criminal or any disciplinary proceedings initiated or finalised, participation in agitation or any Political Organisation, candidature in election for Parliament / State Legislature / Local Bodies etc., if any, should also be furnished to the Commission at the time of application i.e. the details thereof, originals of the judgement of Acquittals, order / or G.O. Dropping further action in Departmental proceedings or any document that may prove the suitability of such candidates for a Government appointment in such cases must be produced at the stage / time of certificate verification.”



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13. Relying on the above declaration and the condition indicated in the recruitment notification, the learned Senior Counsel Mr.P.Wilson would submit that the consequences are informed to the candidates at the first instance and now, the Writ Court has exercised the power of judicial review excessively and granted the relief of appointment which is not in consonance with the legal principles settled.

14. Mr.K.Venkataramani, learned Senior Counsel, appearing on behalf of the first respondent would strenuously oppose that the Tamil Nadu Public Service Commission has no right to file an appeal. The Prison Department has not preferred an appeal. The show cause notice, no doubt issued by Tamil Nadu Public Service Commission, however, pursuant to the orders passed by the Inspector General of Prisons. Thus, the writ appeal is to be rejected on the ground that the Tamil Nadu Public Service Commission has no locus to prefer an appeal. The learned Single Judge of the Madurai Bench of the Madras High Court in W.P.(MD) No.6579 of 2018 held that the criminal case ended with an order of honourable acquittal. Once the candidate is acquitted honourably, then the same cannot



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be considered as a black mark or impediment for appointing a candidate who has already been selected based on merits. In the present case, the first respondent cleared the main examination and was successful in the selection process. His name was included in the provisional selection list. That being so, the order of Madurai Bench in W.P.No.6579 of 2018 is to be taken into consideration for issuance of appointment order.

15. The learned Senior Counsel, Mr.K.Venkataramani would submit that the show cause notice issued by the Tamil Nadu Public Service Commission is without jurisdiction or they have exercised their powers excessively. The show cause notice is predetermined. It is indicated in the impugned show cause notice that a decision has been taken to reject the candidature of the first respondent and therefore, the show cause notice became an empty formality. Even in respect of the earlier order passed by the Inspector General on 12.03.2018, no reason has been assigned. It was a non-speaking order passed in proceeding dated 12.03.2018. Mere information about the criminal case would be insufficient. The nature of the criminal case, involvement of the first respondent and the honourable acquittal in the criminal case, all to be considered for selection and appointment to the post of Assistant Jailor since it was not properly



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considered by the competent authority. The Writ Court has elaborately considered all these issues and allowed the writ petition. Thus, the writ appeal is to be rejected.

16. The learned Senior Counsel for the first respondent would urge by stating that no appeal has been filed by the Tamil Nadu Public Service Commission or the Jail Department, challenging the order dated 27.11.2018 passed in W.P.(MD)No.6579 of 2018. Therefore, the said order became final.

17. In reply, the Mr.P.Wilson, learned Senior Counsel would say that in paragraph no.13 of the said order, the Court has directed the authorities to consider the case of the first respondent afresh and therefore, the authorities are empowered to reconsider the issues and the said exercise was done and an order was passed by the Director General of Police / Inspector General of Prisons in proceeding dated 01.04.2019. Therefore, question of preferring an appeal against the said order would not arise at all.



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18. Though the learned Senior Counsel for the first respondent, Mr.K.Venkataramai elaborately argued the matter concentrating on the scope of the order of acquittal passed by the Criminal Court, the said exercise may not be required with reference to the relevant issue involved in the present case. The issue in the present case is whether the first respondent has suppressed the material fact regarding his involvement in a criminal case in the application at the first instance or not.

19. Verification of character antecedent of a candidate would arise only after completion of the selection process. In the present case, though the first respondent was selected, during the certificate verification the authorities found that he has suppressed material facts / information in the application regarding his involvement in a criminal case. Therefore, the case of the first respondent was not rejected based on the nature of the criminal case but rejected on the ground that he has suppressed the material information in the application form.

20. The application form is submitted by the candidate at the first instance pursuant to the recruitment notification issued. Therefore, the



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authorities, even at later point of time, if found that the information provided are false or certain material informations are suppressed, they can infer by arriving at a conclusion that it is related to the antecedent and character of the candidates.

21. Therefore, the arguments of the learned Senior Counsel Mr.K.Venkataramani regarding the nature of the criminal case or the order of acquittal, whether honourable or otherwise, may not be the only issue which deserves to be considered by this Court.

22. With reference to the issue based on which the rejection order is passed, it is relevant to consider the recruitment notification. As stated in the aforementioned paragraph, clause 6(I) of the recruitment notification clearly indicates that correct and true information regarding arrest, convictions / debarment / disqualification by any recruiting agency, criminal or any disciplinary proceedings initiated or finalised, participation in agitation or any political organisation candidature in election for Parliament / State legislature / Local Bodies etc., if any, should also be furnished to the commission at the time of application. Therefore, the



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column in the application form is to be read along with the information provided in the notification. The column states that “Criminal Case Registered? to which the first respondent has stated in the form as “NO”. Therefore, the answer given indicates that it is running counter to the instructions given in the recruitment notification. Secondly, the declaration form submitted by the petitioner would indicate that he has declared that all the particulars furnished in the application are true, correct and complete to the best of his knowledge. The condition stated in the recruitment notification and the declaration given by the first respondent would be sufficient to form an opinion that the 1st respondent has suppressed the fact regarding his involvement in the criminal case.

23. The learned Senior Counsel Mr.K.Venkataramani would raise a ground that the question asked in the application is vague and improper. The question in the application form indicates that "Criminal case registered?". The said question is to be read along with the instructions given in the recruitment notification. Therefore, if the case is registered, then the applicant has to say “Yes” and thereafter, the web portal will open further and ask the question about the details and number of criminal cases



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registered. Since it is an on-line application, once it is indicated that a criminal case is registered, further questions will be asked and the applicant has to disclose the true facts. Therefore, we do not find any vagueness in the question asked.

24. The case on hand is a case of suppression of material facts in the application form. Therefore, an adjudication of other issues relating to the nature of the criminal case or the findings of the criminal court are unnecessary.

25. Regarding the suppression of material facts, the Hon'ble Supreme Court of India has held that candidates suppressing material facts in the application form is not entitled for appointment. That apart, verification of character and antecedent of a candidate is the prerogative of the selection committee. The High Court, in exercise of the powers of judicial review, cannot interfere with the decision taken by the selection committee regarding the assessment of character and antecedent by the selection committee, more specifically, in uniformed services.

26. The power of judicial review of the High Court, under Article 226 of the Constitution of India, is to ensure the process through which



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the decision has been taken in consonance with the statutes and rules in force and not the decision itself. Therefore, the power of judicial review cannot be expanded so as to interfere with the findings of the selection committee with reference to the character and antecedent of a candidate which has been assessed.

27. In the case of ***Commissioner of Police, New Delhi and another Vs. Mehar Singh***¹, the Apex Court made the following observations:

“34.The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in

¹ 2013 (7) SCC 685



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the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned.”

28. In the case of ***Avtar Singh Vs. Union of India and others***² in paragraph no.38.4, the Hon'ble Supreme Court ruled as follows:

“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 filing 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”

29. In the case of ***Jainendra Singh Vs. State of Uttar Pradesh***

² 2016(8)SCC 171



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*through Principal Secretary, Home and others*³, the Apex Court held as

follows:

“29.5. The purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character /antecedents at the time of recruitment and suppression of such material information will have a clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6. The person who suppressed the material information and / or gives a false information cannot claim any right for appointment or continuity in service.

29.7. The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.”

30. In the case of ***Rajasthan Rajya Vidyut Prasaran Nigam***

³ 2012 (8)SCC 748



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Limited and another Vs. Anil Kanwariya⁴, the Hon'ble Supreme Court

held that:

“14. The issue/question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employee who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself has made a false statement and/or not disclosed the material facts and/or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always

⁴ 2021 (10)SCC 136



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must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

31. In the case of ***Rajasthan Rajya Vidyut Prasaran Nigam Limited*** (supra), an identical issue was dealt with by the Apex Court and the Apex Court in clear terms held that the question is not about whether the employee was involved in dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/or trustworthiness of such an employees, who at the initial stage of the employment, i.e., while submitting the declaration/verification and/or applying for a post made false declaration and/or not disclosing and/or suppressing the material facts of having involved in a criminal case.

32. The above proposition laid down by the Hon'ble Supreme Court would be sufficient to form an opinion in the present case that it is not about the honourable acquittal or acquittal on benefit of doubt. The Writ Courts, while deciding W.P.(MD)No.6579 of 2019 and the W.P.No.21823 of 2019, have said much about the nature of involvement of the first



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respondent in the criminal case and the findings made by the criminal court, including the acquittal. However, the said findings are unnecessary in view of the fact that the entire rejection of the candidature of the first respondent was on the ground that he has suppressed the material fact regarding his involvement in a criminal case in the application submitted to the Tamil Nadu Public Service Commission. Therefore, the Commission is empowered to reject the application on receipt of any information that the material facts are suppressed in the application form.

33. Admittedly, the show cause notice issued by the Tamil Nadu Public Service Commission is under challenged in the writ petition. No writ against a show cause notice is entertainable in a routine manner. A writ against a show cause notice is entertainable only if it is issued by an incompetent authority having no jurisdiction or tainted with the allegations of mala fide. In the present case, the fact regarding involvement of the first respondent in the criminal case was noticed during certificate verification, after completion of selection process. Thereafter, the Commission issued a show cause notice and the said show cause notice came to be challenged.

34. Mr.K.Venkataramani, learned Senior Counsel would submit that



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the Commission pre-determined the issue. We are unable to accept the said contention in view of the fact that if the proposed decision is not communicated to the candidate, he will not be in a position to submit his explanations effectively. Therefore, such an opinion or provisional decision taken by the Commission, informed to the candidate, cannot be construed as if the commission pre-determined the issue. The Commission, on receipt of explanation, is empowered to consider the entire issues and take a decision on merits. For example, if a show cause notice is issued without any such information, writ petitions will be filed on the ground that the show cause notice is bereft of details and the person who received the show cause notice may not be in a position to know the allegations and submit his explanations. Other set of writ petitions will be filed against similar show cause notices, on the ground that it is predetermined. If such arguments are entertained, the authorities will not be in a position to issue any show cause notice to any person. It is not the point to be argued. Mere information regarding proposed decision or certain informations would not invalidate the show cause notice.

35. In view of the discussions made in the above-mentioned



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paragraphs, we are of the considered opinion that the Writ Court has exercised the powers to judicial review under Article 226 excessively by considering the grounds which all are irrelevant with the suppression of fact made by the first respondent in the application form. It is left open to the first respondent to submit reply, if he has chosen to do so. In fine, we could able to arrive at an irresistable conclusion that the writ order cannot be sustained.

36. Accordingly, the impugned writ order dated 15.11.2021 in W.P.No.21823 of 2019 is set aside and the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(C.K.J.,)

02.08.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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1. The Member Secretary,
Tamil Nadu Public Service Commission,
Frazer Bazaar Street, VOC Nagar,
Park Town, Chennai-600 003.

2. The State of Tamil Nadu,
rep. by its Secretary,
Home Department,
Fort St. George,
Chennai-600 009.

3. The Director General of Police cum
Inspector General of Prisons,
Venals Road, Egmore,
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