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Writ Petition No.18288 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.18288 of 2023

and

W.M.P.No.17490 of 2023

S.Chenniappan
S/o.Subramani

... Petitioner

Vs.

1.The Member Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Chennai - 600 003.
(Near Dental College & Chennai Fort Railway Station)

2.The Secretary to Government,
Department of Public Health and Preventive Medicine,
Fort St.George, Chennai - 600 009. ... Respondents

[R2 *suo motu* impleaded as per order dated 25.04.2024 in W.P.No.18288 of 2023 by DBCJ]

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order Memorandum No.5427/PSD-H2/2017, dated 17.04.2023 issued by the respondent and quash the same and direct the respondent to appoint the petitioner for selection to the post of Junior Assistant included in Group-IV services.



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For Petitioner : Mr.G.Murugendran
For Respondents : Mrs.G.Hema
Standing Counsel [R1]
Mr.M.Bindran
Additional Government Pleader [R2]

ORDER

This writ petition has been filed challenging the impugned proceedings of the first respondent dated 17.04.2023 rejecting the candidature of the petitioner for the post of Junior Assistant and for a consequential direction to the first respondent to appoint the petitioner to the post of Junior Assistant Grade-IV services.

2. The case of the petitioner is that the first respondent issued a notification dated 03.07.2017 calling for application for various posts included in Group-IV services. The petitioner submitted his application and he also informed about the pending criminal case against him. He was called for certificate verification and the name of the petitioner was also included in the ranking list. The provisional selection of the petitioner was withheld by an endorsement dated 04.08.2017 on the ground that the criminal case is pending against the petitioner.



3. The petitioner underwent trial in C.C.No.15 of 2012 and the petitioner was arrayed as A4 in this case. The Special Judge, TNPID Court, Coimbatore, by judgment dated 05.04.2022, took into consideration the fact that the offence has been compounded and the entire amount along with interest was paid to all the depositors.

4. The trial Court, on considering the facts and circumstances of the case, came to a conclusion that the accused persons must suffer a punishment and sentence and accordingly ordered as follows:

"43. In the result, considering the nature and gravity of the offence, this court is of the view that the accused are found guilty and sentencing them under Sec.248(2) of Cr.P.C.

- A2 to A7 each to undergo one day simple imprisonment till the rising of the court and each to pay fine of Rs.50,000/- (Fine of Rs.50,000 x 6 accused), in total Rs.3,00,000/- under Sec.120B r/w 420 of I.P.C., in default of payment of fine to undergo further one and half years simple imprisonment;
- A2 to A7 each to undergo one day simple imprisonment till the rising of the court and each to pay fine of Rs.50,000/- (Fine of Rs.50,000 x 6 accused), in total Rs.3,00,000/- under Sec.420 of I.P.C., in default of payment of fine to undergo further one and half years simple imprisonment;
- A2 to A7 each to undergo one day simple imprisonment till the rising of the court and each to pay fine of Rs.50,000/- (Fine of Rs.50,000 x 6 accused), in total Rs.3,00,000/- under Sec.5 of TNPID Act, in default of payment of fine to undergo further two years simple imprisonment;
- A2 to A7 each shall pay Rs.1,50,000. Total fine amount Rs.9,00,000/-;



- The sentences shall run concurrently.
- The imprisonment has already undergone by the accused, if any, shall be set off as per Sec.428 of Cr.P.C.; and No material object available for orders.
- No material object available for orders. Issue NBW against A2 to A7."

5. Aggrieved by the above judgment of the trial Court, the petitioner and other accused persons filed Crl.A.Nos.490 and 492 of 2022 before this Court. This Court, on considering the facts and circumstances of the case and the judgment passed by the trial Court, was pleased to allow the criminal appeals, by judgment dated 13.06.2022, in the following terms:

"7. When the Act specifically makes the offence as compoundable and when the entire amount with interest has been paid to all the depositors, there was no special reason to reject the plea to compound and proceed to convict the petitioners, and that too by levying a huge amount of fine of Rs.9 Lakhs on the appellants. In that view of the matter, I am of the view that the appellants in these Criminal Appeals are entitled to succeed on the following terms:-

- (i) The factum as to the settlement of the entire amount to all the 62 depositors involved in this case is recorded and the offences are compounded under Section 5A of the TNPID Act;
- (ii) The conviction and sentence including the fine imposed by the learned Special Judge, Special Court under the TNPID Act, Coimbatore, by judgment dated 05.04.2022 in C.C.No.15 of 2012 is set aside;
- (iii) Criminal Appeals are allowed accordingly. Consequently, the connected miscellaneous petitions are closed.



- (iv)The amounts which were already paid and pending with the Competent Authority is directed to be disbursed to the depositors in accordance with law and at no point of time the appellants will be entitled to make any claim of the amounts deposited by them in any manner."

6. After the above judgment was passed by this Court in the criminal appeals, the petitioner made a representation dated 20.06.2022 to the first respondent bringing to the notice of the first respondent that the conviction and sentence imposed by the trial Court has been set aside in the appeals. In spite of this representation, there was no response and hence, the petitioner filed W.P.No.5566 of 2023 for a direction to the respondents to deal with the representation and consider the appointment of the petitioner. This writ petition was disposed of by an order dated 27.02.2023 by issuing a direction to the respondents to take a decision as expeditiously as possible.

7. Pursuant to the above order, the impugned proceedings dated 17.04.2023 came to be issued by the first respondent, rejecting the claim made by the petitioner on the ground that the petitioner had suppressed a material fact with respect to his conviction by the trial Court, which was subsequently set aside in the appeals. Aggrieved by the same, the present writ petition has been filed before this Court.



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8. The first respondent has filed a counter affidavit. The first respondent has taken a stand that as per the notification, the candidate has to inform regarding the arrest, conviction *etc.* at any stage of the selection process and if the candidate suppresses material facts, his candidature will be rejected. The first respondent has also taken note of the office order dated 12.11.2020, which provides that for suppression of material information, at any stage of the selection process, regarding criminal cases, arrest, conviction *etc.*, the candidate will be debarred from appearing for examination/participating in the recruitment process conducted by the Commission. In view of the same, the first respondent has taken a very specific stand that the petitioner did not inform the first respondent about his conviction and sentence passed by the trial Court and he only informed after the appellate Court had set aside the judgment in the criminal appeals. To that extent, there was suppression of material fact and the same is a valid ground to reject the candidature of the petitioner. Accordingly, the respondent has sought for the dismissal of this writ petition.

9. Heard Mr.G.Murugendran, learned counsel for petitioner,
Mrs.G.Hema, learned Standing Counsel appearing for first respondent



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and Mr.M.Bindran, learned Additional Government Pleader appearing for
second respondent.

10. In the case in hand, there is no dispute with regard to the fact that the petitioner had intimated at the time of submitting the application that there is a criminal case pending against him. In fact, that is why the candidature was withheld in spite of being provisionally selected. The same is evident from the endorsement dated 04.08.2017.

11. The petitioner under went trial before the Special Court along with the other accused persons. The matter was compounded and the depositors were settled with the entire principal amount along with interest. In spite of the same, the trial Court thought it fit to convict the accused persons and imposed a flea bite sentence against him. The sentence that was imposed against the accused persons was one day simple imprisonment till the rising of the Court and to pay fine.

12. The above judgment of the trial Court became a subject matter of challenge in criminal appeal in CrI.A.Nos.490 and 492 of 2022



before this Court. This Court found that all the depositors were repaid with interest. Therefore, there was no reason to reject the plea of compounding the offence. Accordingly, this Court interfered with the conviction and sentence imposed against the accused persons and the judgment of the trial Court was set aside and the criminal appeals were allowed.

13. After the above development, the petitioner made a representation to the first respondent informing about the subsequent developments. The only reason as to why the candidature of the petitioner is not being considered and is rejected is that the petitioner did not inform the respondents that he was convicted by the trial Court and was sentenced. According to the first respondent, as per the notification and as per the office order, any material information must be conveyed to the first respondent and if the same is suppressed, it will result in rejecting the candidature.

14. The fact that the petitioner was undergoing criminal trial was not suppressed. Ultimately, this criminal trial has already ended in



acquittal since the matter has been compounded. The same is evident from the judgment passed in the criminal appeals by this Court. In view of the same, the judgment of the trial Court pales into insignificance. While that being so, the so-called suppression on the part of the petitioner also does not hold water. The suppression of a material fact by a candidate itself will materially affect the consideration of the candidate for selection. If that material fact itself ceases to exist in view of the subsequent development, there is no reason to reject the candidature on the ground that the conviction and sentence passed by the trial Court was not communicated to the respondents. In the case in hand, the offence had been compounded and this Court found that there was no reason to convict and sentence the accused persons in spite of the offence being compounded. Accordingly, this Court permitted the offence to be compounded. Hence, there is no conviction and sentence in this case since the criminal case has been closed on the ground that the offence has been compounded. Therefore, this Court holds that the petitioner not informing the respondents about the judgment passed by the trial court, will not result in suppression of a material fact.

15. In the light of the above discussion, the impugned proceedings of the respondent dated 17.04.2023 is hereby quashed. There



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shall be a direction to the respondent to consider the appointment of the petitioner to the post of Junior Assistant in the Group-IV services, if the petitioner is otherwise qualified pursuant to his name already being included in the provisional selection list. Necessary orders shall be passed within a period of four (4) weeks from the date of receipt of a copy of this order.

This writ petition is allowed with the above direction. No costs.

Consequently, connected miscellaneous petition is closed.

03.10.2024

Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order

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To

1.The Member Secretary,



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Tamilnadu Public Service Commission,
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(Near Dental College & Chennai Fort Railway Station)

2.The Secretary to Government,
Department of Public Health and Preventive Medicine,
Fort St.George, Chennai - 600 009.

N.ANAND VENKATESH, J

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