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W.P.No.32753 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2024

DELIVERED ON : 22.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.32753 of 2022
and W.M.P.Nos.32145 of 2022 and 1540 of 2024

D.Almas Banu

... Petitioner

-Vs-

1. Tamil Nadu Public Service Commission,
represented by its Secretary,
V.O.C.Nagar, Park Town,
Chennai-600003,
Tamil Nadu.

2. A.Dhilshath
(R2 impleaded as per order
dated 09.11.2023 in
W.M.P.No.21251 of 2023
in W.P.No.32753 of 2022)

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent herein to consider the petitioner for appointment to the post of Assistant Public Prosecutor Grade II in Prosecution Department in the Tamil Nadu General Service pursuant to the notification No.10/2021 dated 25.08.2021.



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For Petitioner : Mr.V.Raghavachari, Senior Counsel
M/s N.Beulah Johnselvaraj

For R1 : Mr.R.Bharanidharan
Standing Counsel

For R2 : Mr.L.Chandrakumar

ORDER

This writ petition has been filed for direction directing the respondent herein to consider the petitioner for appointment to the post of Assistant Public Prosecutor Grade II in Prosecution Department in the Tamil Nadu General Service pursuant to the notification No.10/2021 dated 25.08.2021.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner is a Law graduate and enrolled as an Advocate on 22.09.2010 with the Bar Council of Tamil Nadu and Puducherry. She had also completed her Masters degree. She had been practising in all Courts including this Court as an Advocate in Chennai. While being so, she got an employment as Assistant Manager (legal) on contract basis in Chennai Metro Rail Limited (herein after called as “CMRL”) and she had joined on 17.09.2016. She is working there for the past five years. While being so, applications were invited



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from eligible candidates for direct recruitment to the post of Assistant Public Prosecutor Grade II in Prosecution Department by the respondent Commission by an advertisement dated 25.08.2021. The petitioner had applied for the said post and she had also obtained No Objection Certificate from CMRL to apply for the said post of Assistant Public Prosecutor Grade II. She had appeared for the written examination and qualified for main written examination in the ratio of 1:10. In the main written examination, she had qualified and she was issued call letter for an interview to be held on 01.12.2022. She appeared for interview with all original certificates. Since the petitioner did not suspend her practice while she had joined in the CMRL as Assistant Manager (legal), her application was rejected. Subsequently, she submitted a representation to consider her candidature for the post of Assistant Public Prosecutor Grade II.

4. The learned Senior Counsel appearing for the petitioner submitted that the petitioner belong to BC Muslim. As per the notification issued by the Government dated 25.08.2021, the required educational qualification 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*



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

5. In the same notification with regard to employment details, it is notified as the candidate who are in the service of the Indian Union or a State in India or in the employment of Local Bodies or Universities or Quasi Government Organizations or Public Sector Units constituted under the authority of the Government of India or of a State in India, whether in regular service or in temporary service must inform the Commission of such fact, at the time of applying. Suppression of the fact of employment by candidates shall result in rejection of candidature. Therefore, as per the notification, she does not require to suspend her practice. She never suppressed any of the fact that she has been employed with CMRL. In fact, she has been working as an Assistant Manager (legal) that too on contract basis. Her duty is to attend the Courts and assist the Standing Counsel who appears for CMRL. Therefore, it is also part and parcel of her practice. Hence, she does not require to suspend her practice.

6. The learned Senior Counsel appearing for the petitioner insisted Rule 43 and Rule 49 under Chapter IVA, Part VI of Bar Council of India. As per



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Rule 49, an Advocate shall not be a full-time salaried employee of any person Government, firm, Corporation or concern, so long as he/she continues to practice, 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 petitioner has been working in a part-time contract work under CMRL. Therefore, the candidature of the petitioner ought not to have been rejected on that ground.

7. The learned Senior Counsel also submitted that the petitioner was allowed to write preliminary as well as main examination. Only at the time of interview, the candidature of the petitioner was rejected that too by a oral communication. Therefore, mere failure of suspension of her practice would not be the reason for rejecting her candidature to the post of Assistant Public Prosecutor Grade II.

8. A perusal of the counter revealed that the petitioner is neither eligible nor entitled for any consideration because, in the submission of the application there had occurred suppression of material facts as well as falsity in her claim



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since on being appointed as Assistant Manager (legal) in CMRL, she had failed to temporarily suspend her practice in the Bar Council of Tamil Nadu and Puducherry. If done, she would become ineligible for submission of application as per the notification. The notification prescribes that the applicant must be a member of the Bar which means that “should be practising on the date of notification”.

9. Admittedly, the petitioner is working as an Assistant Manager (legal) in CMRL, from 17.09.2016 till now. It is relevant to extract the Rule 43 and 49 under Chapter IVA, Part VI of Bar Council of India as follows:-

“ 43. An Advocate who has been convicted of an offence mentioned under Section 24A of the Advocates Act or has been declared insolvent or has taken full time service or part time service or engages in business or any avocation inconsistent with his practising as an advocate or has incurred any disqualification mentioned in the Advocate Act or the rules made there under, shall send a declaration to that effect to the respective State Bar Council in which the advocate is enrolled, within days ninety from the date of such disqualification. If the advocate does not file the said declaration or fails to show sufficient cause for not filing such declaration provided there for the Committee suspending by the State Bar Council under rule 42 may pass orders suspending the right of the advocate of practice.

49. An Advocate shall not be a full-time salaried employee of any person government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll



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his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.”

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10. Thus, it is clear that when the petitioner is working in CMRL, she must intimate the fact of her employment to the Bar Council and to suspend her practice as an Advocate, so long as she continues in such employment. Admittedly, the petitioner did not suspend her practice so far by surrendering her Original Enrollment Certificates with the Bar Council. If she had suspended her legal practice, she could not be a member of the Bar Council. Therefore, she cannot apply for the post of Assistant Public Prosecutor Grade II, since it requires to be a member of a Bar Council.

11. Though the learned Senior Counsel appearing for the petitioner specifically contended that the petitioner is working as an Assistant Manager (legal) and assisting the Standing Counsel for CMRL in all Courts, admittedly, she did not file any vakalat on behalf of CMRL. She is only assisting the counsel, who appears for CMRL before all Courts, being an Assistant Manager (legal). Therefore, she has been looking after the legal section of CMRL by giving proper legal advise for the issues. That apart, the petitioner was not allowed to attend the interview. At the time of verification of certificates, her



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application was rejected for the reason that she is not eligible to apply for the post of Assistant Public Prosecutor Grade II. Therefore, the issuance of No Objection Certificate by the CMRL cannot in any way cure the disqualification of the petitioner incurred by being a non-practitioner, which is a precondition to apply for the post.

12. Therefore, the direction sought for in this writ petition cannot be considered and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

22.02.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

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To

The Secretary,
Tamil Nadu Public Service Commission,
V.O.C.Nagar, Park Town,
Chennai-600003,
Tamil Nadu.

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