



W.A.(MD)No.1712 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

and

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.(MD)No.1712 of 2023

and

C.M.P.(MD)No.13084 of 2023

The Secretary,

The Tamil Nadu Public Service Commission,

Frazar Bridge Road,

VOC Nagar, Park Town,

Chennai – 600 003.

: Appellant

Vs.

1.S.Radhika

2.The Secretary to Government,

Backward Classes and Minorities,

Welfare Department,

Secretariat,

Chennai – 600 009.

3.The Superintendent of Police,

Office of the Superintendent of Police,

Sivagangai.

: Respondents

[R3 is impleaded vide order dated 21.03.2024 made in

C.M.P.(MD)No.3950 of 2024 in W.A.(MD)No.1712 of 2023].



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order in W.P.(MD)No.24815 of 2018, dated 11.01.2023 and allow the present Writ Appeal.

For Appellant : Mr.V.Panneer Selvam
For Respondent No.1 : Mr.S.Mohammed Yunnis Raja
For Respondents 2&3 : Mr.N.Satheesh Kumar,
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **R.SURESH KUMAR, J.**]

This Writ Appeal has been directed against the order made in W.P.(MD)No.24815 of 2018, dated 11.01.2023.

2.The first respondent was working as a Police Constable of the Tamil Nadu Police Force. While so, she availed Earned Leave from 19.10.2015 till 17.11.2015. Thereafter, normally she should have joined service on 18.11.2015, but she did not join duty on 18.11.2015 and she also left from her residential address or shifted her residence.

3.Since she did not join duty after completion of the earned leave she availed, the Superintendent of Police, Sivagangai had declared the employee as a deserter and the charge memo in



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P.R.No.13/2016 dated 10.03.2016 was issued, alleging that the first respondent / writ petitioner had deserted. The charge memo was not issued directly to the first respondent / writ petitioner in person, but it was affixed in the earlier address on 29.03.2003, as she already left the address.

4.Subsequently, the appellant Tamil Nadu Public Service Commission had issued Notification No.15 of 2016 for Group IV posts, inviting applications from the eligible candidates. The first respondent / writ petitioner filed application online on 11.08.2016 and she participated in the selection process and though she had become eligible to be selected, was not selected by the appellant TNPSC on the ground that pursuant to the desertion on the part of the first respondent / writ petitioner, the disciplinary authority namely Superintendent of Police, Sivagangai had inflicted the punishment of removal of service against her by order dated 13.11.2016, which was served on her on 24.11.2016.

5.This factor of initiation of disciplinary proceedings against her which ended in the punishment of removal of service had been suppressed by the first respondent / writ petitioner in the application that was submitted before the appellant / TNPSC. Therefore, for having made that suppression and as she already



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earned the punishment, for these two reasons though she became eligible for consideration in the Group IV examination, such selection was denied by the appellant / TNPSC.

6.Challenging the same, the first respondent / writ petitioner approached this Court and have filed a writ petition challenging the memorandum to that regard dated 02.07.2018.

7.Learned Writ Court, after quashing the order impugned in the writ petition had passed an order directing the appellant / TNPSC to select first respondent / writ petitioner and give appointment order on the basis of the results for the Notification No.15 of 2016, enabling her to join duty. Aggrieved over the same, the present Writ Appeal has been directed by the Tamil Nadu Public Service Commission, represented by its Secretary.

8.Heard the learned Counsel appearing for the appellant Service Commission who would submit that the first respondent / writ petitioner had suffered with a punishment that has been suppressed in the application itself filed pursuant to the notification issued by the appellant Service Commission and moreover, the first respondent / writ petitioner suffered with a punishment of removal of service, which though has been reduced by the appellate



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authority into withholding the increment for one year without cumulative effect, the punishment is a punishment which she earned. Therefore, that makes her disentitled to claim the post. As a Government servant, before joining the post, she must have a clean moral turpitude and in the absence of such moral turpitude, she would not be entitled to get selection and even if she got selected based on the marks or performance in the examination appointment cannot be granted. Therefore, such denial made by the TNPSC through the memorandum dated 02.07.2018, is to be sustained. Hence, the interference that has been made by the Writ Court is liable to be set aside and the appeal has to be allowed, he contended.

9.On the other hand, learned Counsel appearing for the first respondent / writ petitioner would submit that insofar as the disciplinary proceedings for the alleged desertion on the part of the first respondent / writ petition is concerned, the respondent / writ petitioner did not have any knowledge about such a disciplinary proceedings as neither the show cause notice nor the charge memo nor any other proceedings pertaining to the disciplinary proceedings had been served on her. He would also submit that though the first respondent / writ petitioner vacated the earlier address, in the vacated premises, it was claimed by the employer



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that notices were pasted. Therefore, it cannot be construed that those notices or the orders have been served on her. Ultimately, the order of punishment of removal from service dated 13.11.2016 had been served on the first respondent only on 24.11.2016. However, three months prior to the said serving of the said order, on 11.08.2016, online application since has been made, the respondent did not have knowledge of the disciplinary proceedings which culminated in the punishment. Therefore, the first respondent / writ petitioner cannot be blamed that she suppressed the fact that she had been punished and disciplinary proceedings had already been initiated and concluded.

10. Learned Additional Government Pleader appearing for the second and third respondents would submit that though the disciplinary proceedings had been initiated, while in advance prior to the filing of the application online to the TNPSC, the said fact if it is suppressed by the first respondent / writ petitioner, it is open to the TNPSC to initiate action with regard to the claim that was made by the first respondent / writ petitioner, for getting an appointment.



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11. Learned Additional Government Pleader would also submit that if the first respondent / writ petitioner was being the member of the disciplined force and had deserted for months together and ultimately, her disciplinary proceedings ended in punishment, that itself become a disqualification for the first respondent / writ petitioner to claim any job from the Government and therefore, on that ground also the action taken under the memorandum issued by the TNPSC is to be justified. Therefore, learned Additional Government Pleader also supports the case of the Service Commission, who is the appellant herein.

12. We have heard the learned Counsel appearing for the parties and have perused the materials placed on record.

13. Insofar as the selection that has been made in respect of the first respondent / writ petitioner pursuant to the notification that was issued by the appellant Service Commission in Notification No.15/16 is concerned, she participated in the selection process and ultimately, got selected. Therefore, she is entitled to get an appointment. However, that appointment was denied by the TNPSC, on the only ground that the first respondent / writ petitioner suffered with a punishment, of course pursuant to the disciplinary proceedings initiated against her when she was



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employed as a Police Constable in the Tamil Nadu Police Force and that position also has been suppressed at the time of making an application for the TNPSC Group IV examinations while applying online. These are the two reasons according to the TNPSC, denying the appointment of the first respondent / writ petitioner.

14.In this context, on the factual matrix it is also the case of the Superintendent of Police who was the erstwhile employer of the first respondent / writ petitioner that, the punishment order dated 13.11.2016 had been served on her only on 24.11.2016 and prior to that the notices or charge memo or any other communications are concerned that had not been served directly on the first respondent / writ petitioner but only pasted in the erstwhile residential building of the first respondent / writ petitioner. Therefore, the defence that has been taken by the first respondent / writ petitioner that she did not have any knowledge about such disciplinary proceedings initiated against her till the punishment order was served on her on 24.11.2016, is to be accepted.

15.If the knowledge about the disciplinary proceedings to the first respondent / writ petitioner is only on serving the punishment order dated 24.11.2016, prior to the said date ie., on



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11.08.2016, since online application has been made to the TNPSC, it may not be expected that the first respondent / writ petitioner should have mentioned about the disciplinary proceedings initiated against her at the time of applying for the TNPSC examination on 11.08.2016.

16.It is further to be noted that pursuant to the Notification No.15 of 2016, subsequent notifications also had been issued by the TNPSC. Insofar as those notifications are concerned, as the same were issued only after 24.11.2016 or after the knowledge of the disciplinary proceedings to the first respondent / writ petitioner, in response to those notifications also when applications were made by the first respondent / writ petitioner, she had mentioned about the disciplinary proceedings initiated against her. It is further to be noted that, though initially maximum punishment of removal from service punishment has been inflicted upon her, subsequently, it has been reduced by the appellate authority and ultimate punishment given by the appellate authority is only withholding of increment for one year without cumulative effect. Therefore, these developments that had been taken place also cannot be said to be a suppression on the part of the first respondent / writ petitioner because on the date when she made the application through online to the TNPSC, as she claim, she had



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no knowledge about the disciplinary proceedings. Therefore, on those grounds alone, if at all the first respondent / writ petitioner is otherwise qualified to any of the post for which she is deserving, her claim of appointment cannot be denied.

17.Therefore, the direction given by the learned Judge by ordering the writ petition through the impugned order to that extent has to be sustained. Accordingly, it is sustained.

18.In the result, this Writ Appeal fails and accordingly, it is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

[R.S.K.,J.] & [G.A.M.,J.]
21.06.2024

Neutral Citation : Yes/No

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MR



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R.SURESH KUMAR, J.

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ORDER MADE IN

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