



W.P.No.31280 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.31280 of 2018 and
W.M.P.No.36465 of 2018

C.Karthikeyan

... Petitioner

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai 600 003.

2.The Registrar of Cooperative Societies,
No.170, EVR Periyar Salai,
Kilpauk, Chennai 600 010.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of 1st respondent made in memorandum No.3715/OTD-F2/2013 dated 02.07.2018 and to quash the same and consequently, direct the respondents 1 and 2 to appoint the petitioner as Junior Inspector of Cooperative Societies with all service and monetary benefits thereto.



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For Petitioner : Mr.L.Chandrakumar

For Respondents : Mrs.G.Hema, for R1
Mr.A.M.Ayyathurai, GA for R2

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of 1st respondent made in memorandum No.3715/OTD-F2/2013 dated 02.07.2018 and to quash the same and consequently, direct the respondents 1 and 2 to appoint the petitioner as Junior Inspector of Cooperative Societies with all service and monetary benefits thereto.

2. Heard Mr.L.Chandrakumar, learned counsel for the petitioner, Mrs.G.Hema, learned Standing Counsel for R1 and Mr.A.M.Ayyathurai, learned Government Advocate for R2 and perused the materials available on record.

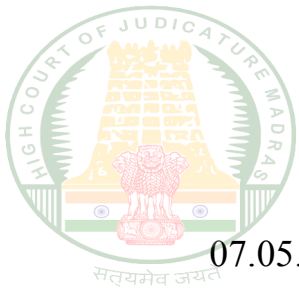
3. The petitioner had applied to the post of Junior Inspector of Co-operative Societies in response to the notification issued by the first respondent for Group III-A services. The petitioner was provisionally



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selected for appointment through the first respondent's memorandum No.3715/OTD-F2/2013 dated 21.12.2017. Previously, the petitioner was working as a Temporary Clerk in Pitchivakkam Primary Agricultural Cooperative Society. While working as a Clerk in the Society, it is alleged that the then president and the Secretary and other employees of the Society have committed certain irregularities and caused loss to the Society. Surcharge proceedings were initiated under Section 81 of the Co-operative Societies Act in which the petitioner was also one of the persons who faced the proceedings.

4. In the surcharge proceedings No.7/2015-2016 A3, a final order has been passed on 22.06.2016 under which, the petitioner was discharged from the said allegations. Yet another surcharge proceedings was also initiated and that was also resulted in discharge of the petitioner *vide* order dated 31.01.2018. However, a criminal case has been registered against the petitioner in this regard in Crime.No.4 of 2017 under which, the petitioner was given with the show cause notice by the first respondent on 12.04.2018. The petitioner submitted his reply on



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07.05.2018 and the same was not accepted and the petitioner's provisional selection was cancelled through the impugned proceedings dated 02.07.2018. Aggrieved over the same, the petitioner is before this Court.

5. The learned counsel for the petitioner submitted that there is no suppression of material information by the petitioner. The petitioner himself has not known about his involvement in the criminal case in Crime No.4 of 2017. Hence, the petitioner did not intentionally fail to disclose any information about the criminal case. The alleged occurrence had taken place in the year 2013 and in all the surcharge proceedings, the petitioner was discharged. The petitioner had not been summoned in the criminal case and even the said case was dropped against him during December 2017. Hence, the appointment of the petitioner cannot be cancelled on the ground that the petitioner had failed to disclose his involvement in the criminal case.



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6. However, the learned Standing Counsel for the first respondent submitted that before entering into the Government service, records of the candidate should be clean. Only then, he could be issued with the appointment order. A disciplinary action has been initiated against the petitioner and he was imposed with the punishment of stoppage of increment for three months without cumulative effect through the proceedings dated 17.10.2019 of the President of Pichivakkam Primary Agricultural Cooperative Credit Society. So far as the criminal cases in C.C.No.1 of 2016 and CC.No.4 of 2017 are concerned, they are pending before the Judicial Magistrate No.1, Chengalpet. The petitioner did not disclose the above fact and only when verification is done, it came to light that FIR has been filed against the petitioner.

7. It is further submitted by the learned Standing Counsel for the first respondent that the substitute candidate who was next in the selected category was selected and the supplementary list was sent to the second respondent Department on 15.04.2019. Hence, there is no vacancy.



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8. The fact that FIR has been registered against the petitioner while he was serving as a clerk at Pitchivakkam Primary Agricultural Cooperative Credit Society was not denied. The petitioner claims that the criminal case against the petitioner was dropped on 26.12.2017. Till then, he did not even know whether he is going to be impleaded in the criminal case or not. The criminal case has been registered against the petitioner for the alleged falsification of records in the Cooperative Society. Though the petitioner is said to have discharged from the criminal case, the fact that the case has been registered against him can very well be within his knowledge.

9. The petitioner was given to understand that in the notification itself he needs to reveal and give correct information regarding his involvement in any criminal case. It is irrespective of the fact whether he has been acquitted, convicted or discharged. The case registered against the petitioner is not a trivial one and it is on the allegation of falsification of records in the Society. When the petitioner was selected to be appointed as the Junior Inspector of Cooperative Societies, no doubt the



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background verification has to be done so seriously. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court rendered in the case of ***Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another Vs. Anil Kanwariya, reported in (2021)10 SCC 136***. In paragraph No.14, it is held as under:

“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 batch cases 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



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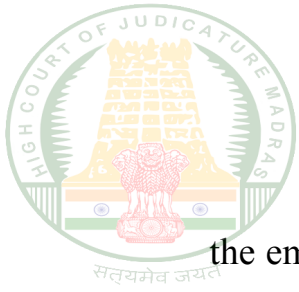


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and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed herein above in catena of decision such an employee cannot claim the appointment and/or continue to be in service as a matter of right.”

10. In the above judgment, it is held that even if an employee is involved in a dispute of trivial nature, while submitting the declaration or verification he ought to have disclosed the same.

11. In the instant case, the allegation made against the petitioner in a criminal case is not trivial in nature. Even if the petitioner failed to disclose the same in his application, he could have disclosed it atleast at the time when he gave a declaration on 30.10.2017. The credibility and trustworthiness of the employee has to be cleared and confirmed at the initial stage of the employment itself. Hence, the concern on the part of



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the employer in finding out the character and antecedent of the candidate is the profound duty of the recruitment agency. The Cooperative Societies are places where public money is handled and hence, a thorough check about the credibility, reliability of the persons recruited to the appointments made in the Society is very much essential.

12. The Division Bench of this Court after having referred to various judgments of the Hon'ble Supreme Court on the same subject, had crystallized the preposition of law and rendered a finding in the case of *The Director General of Police and Others Vs. K.Indhu Kumar*. In the said judgment, it is held as under:

"(D). SUMMARY OF PREPOSITION OF LAW:

19. In the light of the above said deliberations, the preposition of law could be summarized as follows:

(a). In case of honourable acquittal, discharge, case closed as mistake of fact, quashing of F.I.R/Charge Sheet before the date of police verification, the same should be considered in favour of the candidate in the current selection itself.



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(b).Where the candidate has been acquitted on the ground of benefit of doubt or hostility of witnesses (before the date of police verification), that would not confer any right upon the candidate to claim appointment as a matter of right. It is for the employer to consider the suitability of the candidate based upon his conduct and antecedents only if the offences are trivial in nature.

(c).Where the criminal case has been quashed (before police verification) on the basis of a compromise and the offence is of trivial in nature, the same can be considered in favour of the candidate in the current selection itself. However, if the offence involved is not of a trivial in nature, the same cannot be considered for appointment.

(d).Where a candidate having knowledge about his involvement in a criminal case had suppressed the same in his application and the said offence is not trivial in nature, he is not entitled to seek any appointment. On the other hand, in cases of trivial offences, without knowledge about his involvement or after having knowledge had suppressed his involvement, the employer in his discretion is entitled to consider the candidature by considering his character and past antecedents.



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(e).Where the candidate is involved in petty/trivial cases like family dispute or dispute with neighbors or shouting of slogans or traffic offence where fine was imposed, the same can be considered to be offence of trivial/petty in nature. However, the offence against women, children or under NDPS Act should never be considered to be an offence of trivial in nature.

(f).Where the candidate is involved in criminal offences under Juvenile Justice Act, he/she is to be considered in the light of the Division Bench Judgment of this Court dated 01.03.2023 in Rev.Apln.No.17 of 2023 in W.A.No.2759 of 2018 (The Superintendent of Police, Villupuram District Vs.S.Rajeshkumar).

(g). Pending the recruitment process, if a candidate is discharged from the criminal case or acquitted in the criminal case, he/she shall be eligible to be considered for the next recruitment process as per Rule 14(b) of the Tamil Nadu State Police Subordinate Service Rules."

13. In the instant case even when the petitioner had applied to the post and has given declaration on 30.10.2017, the criminal case was very much pending against him and he came to be discharged only later. Further, the offence is not trivial in nature and it is unbelievable that the

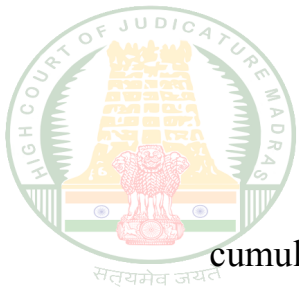


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petitioner did not have the knowledge about the pendency of the criminal case against him and that he was awaiting to know whether he was involved in the criminal case or not.

14. The investigation might be pending and the petitioner might not be knowing about the result of the investigation. Without having him impleaded as an accused in the FIR, it is not possible to drop action against him at the conclusion of the investigation. Even it might be true that the criminal action against the petitioner was dropped, the fact that the case was pending against him at the time when he applied for the post and he submitted his declaration was very much true. The petitioner appears to have knowingly suppressed the information about the pending criminal case against him.

15. It is learnt from the submissions of the learned Standing Counsel for the first respondent that a disciplinary action has already been initiated against the petitioner and he has been imposed with the punishment of stoppage of increment for three months without



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cumulative effect by proceedings dated 17.10.2019 by the President of

Pitchivakkam Primary Agricultural Cooperative Credit Society.

According to the information gathered by the second respondent, two criminal cases are said to be pending with CCIW, Kancheepuram with regard to the irregularities committed for issuing a loan to the tune of Rs.7,91,873/- by preparing false records.

16. Even though the previous acquittal, conviction, discharge in trivial offence against the appointee cannot always be looked as a hurdle for his appointment and the employer can consider all relevant factors and take appropriate decision about his appointment, that has to be done only on a case to case basis. In this regard, it is appropriate to refer the judgment of the Division Bench of this Court held in W.A.No.2075 of 2022 dated 02.08.2024 (The Member Secretary Vs. M.Thayanithy and Others), wherein it is held that the power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the process through which the decision has been taken in consonance with the statutes and rules in force and not the decision itself. The relevant



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paragraphs of the above judgment are extracted hereunder:

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"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 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."



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17. Once the Appointing Authority has arrived at a conclusion as to the reliability of the character of his appointee, then the role of the Court played under Article 226 of the Constitution of India is very limited. As stated in the above judgment, the Courts can ensure whether due process was adopted before taking a decision by the authorities concerned. In the case in hand, the first respondent has issued show cause notice to the petitioner before passing an order to cancel the order of appointment. Only after giving opportunity to the petitioner to offer his explanation, the decision has been taken by the first respondent.

18. So far as the suppression of material facts is concerned, that will go to the root of the matter. Failure to disclose the pending criminal case itself can be taken seriously by the recruiter irrespective of its disposal on merit or demerit. In view of the above reasons, I do not find it is a fit case where any indulgence be shown for setting aside the impugned order as prayed.



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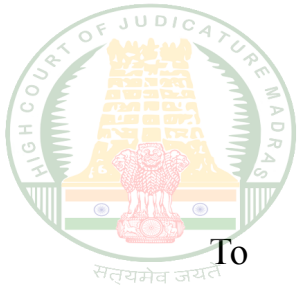
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19. In the result, this Writ Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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07.02.2025



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