

(1987) 01 MAD CK 0042
In the Madras High Court
Case No : Writ Appeal No. 889/86

D. Anbalagan

APPELLANT

Vs

The Tamil Nadu Public Service Commission and The Treasury
Officer Vellore, North Arcot District

RESPONDENT

Date of Decision : 21-01-1987

Acts Referred:

Citation : (1987) 2 LLJ 55

Hon'ble Judges : M.N. Chandurkar, C.J;M. Srinivasan, J

Bench : Division Bench

Judgement

M.N. Chandurkar, C.J.—This is an appeal by the original petitioner whose writ petition, which was substantially directed against the order

dated 13th December, 1982 made by the Tamil Nadu Public Service Commission holding that the selection of the petitioner is cancelled and his

name is removed from the list of junior assistants and that he is debarred from writing any examination conducted by the Public Service

Commission for a period of one year from 16th November, 1982, was dismissed by the learned single Judge.

2. The petitioner has come to Court in rather unusual circumstances. Between 23rd October, 1974 and 31st May, 1976, the petitioner had held

temporary employment in Government service under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services. For a

brief period from 23rd October, 1974 to 19th February, 1975 he was junior assistant at the Taluk Office, Chengam. Then from 21st February,

1975 to 3rd April, 1975 and from 16th April, 1975 to 31st May, 1976, he was working as a Special Revenue Inspector at Arni. After 31st May,

1976 the petitioner was unemployed till 8th November, 1976 when he once again

got a temporary employment as a record clerk at the Government High School, Athimoor.

3. With a view to provide employment to such of those persons who had put in one year of service either continuous or with breaks as on 31st

March, 1977 and who were in service on that date or if not in service on that date, they have been discharged on or after 1st April, 1974, the

Tamil Nadu Public Service Commission decided to hold a qualifying examination. This was for appointment as junior assistant, typist and steno-

typist. The last date for receipt of the applications at the Commission's office was 28th November, 1977. Accordingly, the petitioner who fell

within the category of employees for whose benefits the special qualifying examination was to be held, forwarded an application through the Taluk

Office, Chengam where he originally worked as a junior assistant. He appeared for the examination which was held on 28th December, 1977. He

passed the examination and consequently he was selected to be appointed as a junior assistant. He was also posted as junior assistant on 14th

August, 1980 under the Treasury Office, Vellore.

4. About six Months after the examination was held, the petitioner's temporary appointment as record clerk at the Government High School,

Athimoor came to be regularised on 11th May, 1978 with effect from 8th November, 1976. Before the petitioner joined the post of Junior

Assistant at Vellore, he tendered his resignation from the post of record clerk on 20th August, 1980 which was accepted on 29th September,

1980. The petitioner was selected for civil services training and was duly posted after such training on 27th October, 1981. Almost a year

thereafter, the Public Service Commission issued a notice requesting the petitioner to show cause as to why his selection should not be cancelled.

The two grounds on which the selection was proposed to be cancelled were that his services as a record clerk at the Government High School,

Athimoor having been retrospectively regularised with effect from 8th November, 1976, the petitioner was not entitled to apply for the post of

junior assistant which was advertised and for which the special examination was held, because on 28th November, 1977 he was in permanent

service of the Government being a record clerk in the Government High School, Athimoor, his services having been regularised with retrospective

effect from 8th November, 1976. The second ground was that he has suppressed the fact that on the date of the application, he was working as a record clerk.

5. The petitioner gave an explanation that it was purely due to mistake that he did not specify that he was working as a temporary employee, and

secondly according to him, he was totally unaware on the date on which he made the application that his services would be regularised

retrospectively. In other words, according to the petitioner, the retrospective regularisation did not affect the fact that on the date on which he

made the application, he was holding only a temporary employment. Both these contentions were rejected by the Public Service Commission and

an order came to be passed on 13th December, 1982 cancelling the selection of the petitioner. Consequent upon the order of the Public Service

Commission dated 13th December, 1982, the Treasury Officer, District Treasury, Vellore made an order dated 22nd December, 1982 terminating

the petitioner's employment.

6. In the writ petition filed before this court, the petitioner has made a prayer that the order dated 13th December, 1982 which is really the

substantive order which has prejudicially affected the petitioner should be quashed and the second respondent, that is the Treasury Officer, District

Treasury, Vellore should be directed to post the petitioner as a junior assistant with continuity of service and other attendant benefits. We have

referred to this relief because one of the contentions raised by the learned Government Pleader is that the order of the Treasury Officer has not

been challenged by the petitioner.

7. The learned Judge seems to have dealt with a similar matter in Writ Petition No. 3740 of 1984 in which the learned Judge has taken the view

that there was no proper application at all made to the Public Service Examination and therefore that writ petition was rejected summarily. The

learned Judge took the view that column 14 of the application specifically required the disclosure of "particulars of employment, regular or

temporary, whether in Government service or not and date of appointment to and relief from each post and reasons for leaving each post and

emoluments in each post." The learned Judge does not seem to have dealt with the question as to whether the retrospective regularisation of the

petitioner's temporary employment as record clerk could render his application which was made when he was admittedly a temporary employee, as not proper.

8. Two contentions are raised by Mr. K. Chandru in this appeal. Firstly, it is urged that since admittedly the petitioner was in temporary employment on the date on which he made the application, the Public Service Commission was not right in taking the view that the petitioner's application was liable to be rejected on the ground that he was holding a permanent post. The second contention is that the petitioner bona fide believed that it was enough compliance with the requirement of the advertisement to forward the application through the Taluk Office, Chengam and the case could not be treated as one of suppression of any material information.

9. Now it is difficult to see how the Tamil Nadu Public Service Commission, after having entertained an application which when made was properly made, could, as a result of a regularisation order made long after the examination, hold that the application was not maintainable. The last date for submitting the application was 28th November, 1977 and the examination came to be held on 28th December, 1977. It was only in May, 1978 that the services of the petitioner were regularised albeit retrospectively. That, however, could not create any infirmity in the application itself which was already sent to the Public Service Commission. The Public Service Commission was, therefore, in error in holding that there was any infirmity in the application which when made was perfectly in order.

10. Even on the second ground, it is difficult to sustain the view taken by the Public Service Commission that there was any suppression of material information. Failure to fill up any column does not necessarily lead to an inference of suppression. We are entitled to assume that the application of the petitioner must have been carefully scrutinised and then only he was asked to appear at the examination. Therefore, at the time of scrutinising, the information not given must not have been considered as something which created a defect in the application. Where a charge of suppression of some material fact is made, the implication is that certain material is withheld from the authority with some ulterior motive. If under a bona fide mistake all that is required to be stated had been stated, and some fact which is

not considered as relevant by the applicant is not stated, an inference of suppression of any material fact cannot be mechanically drawn. Admittedly, when the application was forwarded to the Public Service Commission, the petitioner was merely holding a temporary employment under Rule 10(a)(i). It is not the case of the Public Service Commission that if the petitioner had disclosed that he was working in a temporary post in the Government High School, Athimoor, the disclosure of that fact would have in any way materially affected the merits of the application. It is not the case of the Public Service Commission that if that fact was stated, the application of the petitioner would have been rejected. It is therefore clear that the inference of suppression of any material fact could not be drawn by any reasonable person on the facts of the present case. On both the grounds, therefore, there is a clear infirmity in the order of Public Service Commission which must be quashed. In the view which we are taking, we are not inclined to go into the question as to whether after the selection list had been implemented by the Government and an appointment is made, the Public Service Commission has jurisdiction to reopen the question of maintainability of the application itself and whether the Public Service Commission does not become functus officio after the State Government has accepted the recommendations and the appointment has been made.

11. So far as the objection of the learned Government Pleader that the petitioner has not expressly prayed for the quashing of the order of the Treasury Officer passed on 22nd December, 1982, it has to be pointed out that the petitioner has prayed that he should be reinstated. Merely because quashing of that order has not been prayed for specifically, that will not deprive the petitioner of that relief if he is otherwise entitled to it. We therefore take the view that merely because there is no specific prayer for setting aside a consequential order, the relief which is otherwise due to the petitioner cannot be rejected. Refusing relief in such a case would amount to taking a hyper-technical view of the matter. This is apart from the fact that the order of the Treasury Office is a mere consequential order which only gives effect to the decision of the Public Service Commission. In our view, the learned single Judge was in error in rejecting the petition filed by the petitioner. The order of the learned Judge

rejecting writ petition is set aside. The writ appeal is allowed, the order of the Tamil Nadu Public Service Commission dated 13th December,

1982 and the consequential order of the Treasury Officer, Vellore dated 22nd December, 1982 are quashed. The petitioner must be deemed to

be in continuous service from the date on which his services had been terminated. He will also be entitled to salary and all the incidental benefits

following the quashing of the order of termination. The petitioner is entitled to the costs of this appeal. Counsel's fee Rs. 500/-.