

(2017) 03 MAD CK 0072

In the Madras High Court

Case No : Writ Petition Nos.37769, 39261, 42351 and 44770 of 2016 and WMP.
Nos. 32370, 33616, 33617, 36254, 36255, 37347 and 38611 of 2016

D. Ramganesha

APPELLANT

Vs

Tamil Nadu Public Service Commission

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 MLJ 513

Hon'ble Judges : Mr. Nooty Ramamohana Rao and Mr. S.M. Subramaniam, JJ.

Bench : Division Bench

Advocate : Mr. V. Raghavachari, Advocate, for the Petitioner in WP.No. 37769 of 2016; Mr. R. Singaravelan for Mr. P.S. Amalraj, Advocates, for the Petitioner in WP.No. 39261 of 2016; Mr. V. Lakshminarayanan for Mr. S. Santhosh, Advocates, for the Petitioner in WP.No. 42351 of 2016; Mr. G. Sankaran, Advocate, for Petitioner in WP.No. 44770 of 2016; Mr. P.S. Sivashanmugasundaram, SGP, Advocate, for the State in WP.Nos. 37769, 39261 and amp; 42351 of 2016; Mr. R. Prathap Kumar, AGP, Advocate, for the State in WP.No. 44770 of 2016; Ms. C.N.G. Niraimathi, Advocate, for the TNPSC in WP.Nos.37769 and 44770 of 2016

Final Decision : Disposed Off

Judgement

Nooty Ramamohana Rao, J. - All these four writ petitions raise a common question relating to the recruitment to the post of Civil Judge (Junior Division) in the Tamil Nadu State Judicial Service, are heard together as can be disposed of by this common judgment.

2. Heard Mr. V. Raghavachari, Mr. R. Singaravelan for Mr. P.S. Amalraj, Mr. V. Lakshminarayanan, Mr. G. Sankaran, learned counsel for the respective petitioners, Mr. P.S. Sivashanmugasundaram, learned Special Government Pleader and Mr. R. Prashal Kumar, learned Additional Government Pleader for the State in the respective writ petitions, Ms. C.N.G. Niraimathi, learned Standing Counsel appearing for the Tamil Nadu Public Service Commission and Mr. C.T. Mohan, Mr. R. Vijayakumar and Mr. V. Vijay Shankar, learned Standing Counsel

appearing for the High Court in the respective writ petitions.

3. Tamil Nadu Public Service Commission (henceforth called the Public Service Commission) has notified on 26.8.2014 the process of recruitment to the post of Civil Judge (Junior Division) proposing to fill up 162 vacancies. The written examination was relatively conducted on 01.11.2014 and 02.11.2014. Applications were invited only through online mode upto 21.9.2014. The application form contained the following column :

"Criminal Case (Registered/pending/punishment awarded) : and quot;

4. All the writ petitioners, who are practising advocates, have responded to the Notification. The petitioner in W.P.No. 37769 of 2016 furnished information against the aforementioned column as under :

"Yes/No/No"

whereas the petitioners in all the other writ petitions have furnished the following answer :

"Not applicable"

5. The results were published on 20.2.2015 and all of them have fared well to be short-listed for verification of certificates for provisional selection and they were all notified of their provisional selection on 15.6.2015. The State Government, through their orders contained in G.O.4D.NO.49 Home (Courts-I) Department dated 20.8.2015 have selected and appointed 138 candidates as Civil Judges (Junior Division). Not finding the names of the writ petitioners in the said order of appointment, enquiries were made and representations have been submitted to find out the reasons as to why they were not appointed notwithstanding the provisional selection. The Public Service Commission, through its memo dated 06.10.2016, has communicated the reasons for non selection of the writ petitioners concerned. Calling in question this memorandum, the present writ petitions came to be instituted.

6. Uniformly, the High Court has decided to reject the candidature of the writ petitioners for recruitment as Civil Judge (Junior Division) and based upon the decision of the High Court, the Public Service Commission has communicated the rejection of the candidature of the writ petitioners concerned for appointment as Civil Judge (Junior Division). It is also uniformly set out that the involvement of the candidate in one criminal case or the other either before commencement of the recruitment process or during the process of recruitment or after completion of the recruitment process, as the case may be, has come to light and hence, the candidature of the writ petitioners has been rejected.

7. The question that is raised before us is the same, which has fallen for consideration time and time again in one form or the other namely whether involvement in a criminal case is an automatic fact or for disqualification of the candidature itself. This very question has fallen for consideration on several

occasions before this Court as well as before various other Courts as well as before the Supreme Court. Various views have been expressed by various Courts for a long period of time and the spectrum ranges from

- (i) involvement in a criminal case is itself a disqualification;
- (ii) it all depends upon the nature of selection;
- (iii) it all depends upon the nature of exoneration secured in the criminal case; and
- (iv) it depends upon the status of employment.

8. In fact, the Supreme Court had also occasion to deal with various related questions for over a long period of time. As a result, when Civil Appeal No. 5671 of 2012 between Jainendra Singh and State of U.P. [reported in 2012 (8) SCC 748] has come up for consideration, the Supreme Court, after noticing the range of views expressed by various Benches of the Supreme Court till then, had noticed the divergence of opinion to a certain extent. Hence, the Supreme Court felt it appropriate to refer the said civil appeal to be considered by a Larger Bench so as to express one uniform opinion on the subject.

9. Thus, the matter came to be considered by a Bench of Three Judges in *Avtar Singh v. Union of India* [reported in 2016 (8) SCC 471]. After reviewing all the earlier cases including the one in *Daya Shankar Yadav v. Union of India* [reported in 2010 (14) SCC 103] and *State of West Bengal v. S.K. Nazrul Islam* [reported in 2011 (10) SCC 184], the following principles have been settled by the Larger Bench in paragraph 34 of the judgment in *Avtar Singh* :

"No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects."

10. The Supreme Court has pointed out that verification of character and antecedents is one of the important criteria to assess the very suitability of the candidate for employment and hence, it is open to the employer to adjudge the antecedents of the incumbent based upon objective criteria. It is also held that though a person is guilty of suppression of material information and consequently has no claim of unfettered right of appointment or continuity in service, however, he has a right not be dealt with arbitrarily. It is further held that the ultimate decision, which is the result of exercise of necessary power by the employer, shall be carried out in a reasonable manner with objectivity having due regard to the facts of the case.

11. In paragraph 38 of the said judgment, the following principles have been settled :

"We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/ verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:-

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority

would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/ removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/ verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

12. The decision in Avtar Singh does not appear to stop the litigation. In the instant case, various contentions have been advanced before us at great length and we will advert to them one after the other.

13. Mr. V. Raghavachari, learned counsel appearing for the petitioner in the first writ petition, had contended that the petitioner is not guilty of suppression of any information, much less, material information itself, when he has furnished the information as "Yes/No/No" at the relevant column, thus implying that a criminal case was registered against him, but he was discharged by the competent Criminal Court, as there is no material to speak of his involvement in any such crime.

14. Mr. V. Raghavachari, learned counsel would elaborate that there is a strained relationship between his elder brother and his wife, who were living abroad and his sister in law, during one of her visits to India, has proceeded to the nearest police station to lodge a criminal case against her husband and other family members of her husband and that is how the writ petitioner came to be implicated in a criminal case. Since he is in no way guilty of any misdemeanor, the writ petitioner has sought for discharge and the discharge petition has been ordered after considering the objections of the complainant.

15. It is, therefore, urged before us that when the writ petitioner does not possess any character, which is blameworthy at all, it is not appropriate that his candidature should be rejected for appointment as a Civil Judge (Junior Division) outright. The learned counsel would specifically invite our attention to paragraph 21 of the judgment in Daya Shankar Yadav, which is as follows :

"If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and

unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that the CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straightforward. Be that as it may."

16. It is contended that when several other persons, against whom criminal cases are pending, were considered for appointment, the writ petitioner cannot be disqualified altogether even without providing him an opportunity to explain his position. The learned counsel would further contend that the writ petitioner, on his own, made available the certified copy of the order passed in the criminal case and hence, it would have become crystal clear that the writ petitioner was unnecessarily implicated in the criminal case without any blameworthy conduct on his part.

17. Mr. Singaravelan, learned Senior Counsel and the other learned counsel appearing for the petitioners, who have furnished against the relevant column, the answer as "not applicable", would contend that the very information sought for by the Public Service Commission in the application form is very vague. He would further contend that unlike a civil case, which is invariably filed in one competent Court or the other where a separate register is maintained for registering such cases, the question of registering a criminal case would not arise. If a complaint discloses commission or likely commission of a cognisable offence, the police officer concerned, in charge of the police station, has to record the gist of the said complaint in a register maintained for the said purpose in the police station in terms of and in accordance with Section 154 of the Criminal Procedure Code. That is popularly called as the first information report (FIR). Recording an FIR by a police officer in-charge does not amount to registration of a criminal case. Therefore, when the candidate has given the answer as "not applicable", he is not guilty of suppression of any material fact, is the plea urged.

18. We have no difficulty whatsoever to reject this contention. The candidates, who are required to respond to the Notification concerned are all practising Advocates. More than anyone else, they know the significance of recording an FIR in a police station, in which, the alleged persons, who have committed the offence or likely to commit the offence are shown as accused persons. Though technically it may not be a correct expression to say that a criminal case is registered, but what the Public Service Commission required the candidates to disclose is as to whether any FIR was booked at all. Therefore, the petitioners, who are responding to a Notification for recruitment to the post of Civil Judge (Junior Division) can be safely assumed to know that the information called for is only with regard to booking of an FIR involving them in the commission or prospective commission of an offence.

19. All the petitioners in the writ petitions excepting the first one, are, therefore, guilty of withholding the information. More than anyone else, it is they, who know the sanctity of disclosing truthfully and faithfully the information called for. It is they, who know that the legal maxim "suppressio veri or suggestio falsi" has certain significance while dealing with cases by Courts and hence, as part of the art of practising law, no party is allowed to suppress the truth, which can possibly mislead the opposite side. Therefore, the three writ petitioners cannot take advantage of the answer furnished by them as "not applicable".

20. But, that does not seem to be the end of the matter. Mr. R. Singaravelan, learned Senior Counsel and Mr. G. Sankaran, learned counsel would contend that suppression of fact clearly presupposes knowledge of the said fact by the person concerned. If the person is not in the know of recording of FIR showing him as an accused person, then how can he disclose that such an FIR was booked against him. This contention certainly deserves consideration. Unless the person concerned is aware of the factum of booking an FIR by the police concerned, he may not be in the know of such a fact, for him to disclose it when asked for.

21. There can be any number of instances where a particular person may be suspected to have played a role in the commission of an offence, particularly so when the complainant himself is not an eyewitness to the occurrence of the crime. But, when the investigation is carried on, it is more likely that the actual players in the event would get identified. Therefore, till such time the investigation is carried on, some times on a mere suspicion, a person may have been arrayed as an accused person. It is only when the investigation zeroes upon the actual involvement of such a person, the necessary follow up action would be taken up by the police by filing final report under Section 173 of the Criminal Procedure Code. Until then, some times, the person concerned may not be in the know of the FIR or its contents as well.

22. Therefore, before a person can be condemned to have been guilty of suppression of information, which is undoubtedly material and relevant for his ultimate selection, with regard to his involvement in a criminal case, certain amount of knowledge is liable to be attributed to him. More importantly, as to whether such a person is aware of the pendency or booking of the criminal case against him, would depend upon the response he would be furnishing. If only his attention is drawn to such adverse information, particularly by issuing a notice to him, as the Senior Counsel has pointed out that antecedents' verification plays a very important role in making an assessment about the suitability of the individual for the employment concerned, as any vital aspect relating to his character would be a decisive factor in holding one way or the other about his suitability.

23. In *Daya Shankar Yadav*, the following proposition has been spelt out in paragraph 15 :

"When an employee or a prospective employee declares in a verification form,

answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:-

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/ crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honorably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or nondisclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/ attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above."

The judgment in Avtar Singh has reiterated approvingly these very principles.

24. The petitioners herein have never been put on notice. If only an opportunity has been provided to them by the High Court, they would have laid threadbare as to how they are not in the know of the criminal case/ FIR against them and as to how they are not guilty of suppression of material information. It is hardly in doubt that if the petitioners are guilty of suppression of any material fact, they do not deserve any further consideration for the post of a Civil Judge, which requires persons with certain approved conduct and character alone to be appointed.

25. A Court, as an institution, receives utmost respect in the larger society because of the sense of fairness of approach, in-depth knowledge, objectivity and above all, an assuredly good conduct and behaviour exhibited and impeccable character possessed by those, who are manning the institutions, in

and outside the Court precincts. The confidence of the general public is the basic foundation, upon which, such institutions are built up. If the confidence of the public were to be undermined or allowed to be eroded, the very credibility of the institutions would suffer an irreversible dent, leading to stress and strain to the institution itself.

26. The institution of justice delivery mechanism, therefore, depends upon the men, who matter and such men must bear impeccable conduct and behaviour. They must represent the ideal characteristics to be possessed by a man, so that even in adverse situations, he will be able to exhibit a far superior conduct setting an example for others to follow. We are, therefore, of the opinion that any attempt of suppression of material facts relating to the involvement of the candidate in any criminal case either before the process of recruitment is initiated or during the process of selection or even thereafter would squarely disentitle the candidature of such a person to be taken into account, leading to his appointment in the service. Larger public interest demands that no person, who has been involved in a criminal case, but suppressed to disclose such information, is entitled to be appointed to the service.

27. Mr. R. Singaravelan, learned Senior Counsel has also pointed out that there is distinction between suitability of a candidate and a candidate being declared as not suitable to hold a particular post.

28. Though both the terms appear to reflect the same, but, there can, at best, be a very fine or subtle distinction a person being declared as suitable in contrast to a decision that he is not suitable.

29. As already noticed by us *supra*, the firm view of the Supreme Court is that the suitability or otherwise of the candidature shall be decided in a fair and reasonable exercise of power and above all, with a sense of objectivity. Such objective criteria are liable to be disclosed beforehand and all candidates must be measured by the same yardstick. Though the learned Senior Counsel has placed reliance upon the judgment rendered by the Supreme Court in *M. Manohar Reddy and another v. Union of India* [reported in 2013 (3) SCC 99] and *High Court of Madras v. R. Gandhi* [reported in 2014 (11) SCC 547], we are of the view that the suitability to hold a Constitutional office/post stands entirely on a different footing from that of adjudging the suitability of a person to hold a public office or post.

30. When it comes to the selection/appointment to a Constitutional office, there is an assuredly fair mechanism where a deeper consultative process is involved and at various superior stages of administration. As a result of consideration at different levels, the process of selection culminates in appointment. Therefore, an altogether high degree of consultative process ensures fair and objective standards as an inbuilt mechanism therein whereas when the suitability of a particular candidate to hold a particular post, which is no doubt forming part of public employment, stands entirely on a different footing. At best, a quasi

judicial, if not an administrative exercise is carried out in respect of such public office/post. That was the reason as to why the assessment of suitability of a particular individual to hold a public post/office is not treated as completely not amenable to judicial review at all.

31. Mr. R. Singaravelan, learned Senior Counsel appearing for the petitioner in W.P. No.39261 of 2016, would urge that the decision of the High Court in appointing one another candidate, against whom, a criminal case was pending, brings out that the High Court/the State Government/the Public Service Commission have not considered involvement in a criminal case as a factor of disqualification, per se, for appointment to the post of Civil Judge (Junior Division).

32. We are not in agreement with this proposition, laid out on such a broad canvass. May be that the High Court may have approved the provisional selection of one or two candidates, against whom, criminal cases are pending. But, that is no reason for holding that involvement in a criminal case is not a factor of disqualification for appointment as a Civil Judge (Junior Division). At best, the decision of the High Court to approve the provisional selection in favour of such candidates can be termed or characterised as entertaining an erroneous view.

33. In this context, we will be extremely profited to subscribe to the view rendered by the Supreme Court in the case of Commissioner of Police v. Mehar Singh [reported in 2013 (7) SCC 685] wherein in paragraph 35, it has been held thus :

"The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category."

34. If this can be said of recruitment as a police constable in Delhi Police, it would work with greater force when it comes to the question of appointment as a Civil Judge. We fail to imagine that there can be candidates, whose involvement in criminal cases can still fetch them selection and appointment as Civil Judge (Junior Division).

35. The legal principle, which comes in the way of the writ petitioner is this :

If an error of judgment had occasioned once before, we cannot compel the same error to be repeated again and again. Far from allowing the error to recur, wisdom lies in reviewing the earlier erroneous decision and rectifying the error as far as it is feasible and possible.

36. We are sure and confident that the High Court would take appropriate measures to review and reconsider such cases where selections were finalised in favour of candidates, against whom, criminal cases are still pending instead of

directing the High Court to repeat the same error again and again.

37. Finally, we dispose of all the four writ petitions requiring the High Court to put the respective petitioner on notice by inviting objections and then bestow consideration of the facts in each case and then arriving at an appropriate decision as to whether the conduct behind involvement in the criminal cases by the respective candidates is such that amounts to disqualification for holding the office of Civil Judge (Junior Division) and the decision taken thereon may be communicated as expeditiously as possible, preferably within a maximum period of two months from the date of receipt of this order. No costs. Consequently, the above WMPs are closed.

38. We sincerely acknowledge the assistance we have received from all the learned counsel, who have conducted the matter with a fair sense of objectivity.