

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Contempt Petition No.182 of 2015

in

W.P. No. 10218 of 2014

C. Raman

.. Petitioner

Vs.

Mr. M. Vijayakumar

Secretary

Tamil Nadu Public Service Commission

No.3, Frazer Bridge Road

V.O.C Nagar

Chennai - 600 006.

.. Respondent

PRAYER:- Contempt Petition filed praying to punish the respondent for willful disobedience of the order passed by this Court in W.P. No.10218 of 2014 dated 17.06.2014 and pass further orders.

For Petitioner : Mr. K. Ramasamy

For Respondent : Mr. P.H. Arvinth Pandian,
Additional Advocate General
Assisted by Mr. M.Devendran
SC for TNPSC

O R D E R

This Contempt Petition has been filed alleging that the respondent/ Mr. M. Vijayakumar I.A.S., Secretary, Tamil Nadu Public Service Commission, has disobeyed the order of this Court dated 17.06.2014 made in W.P. No. 10218 of 2014.

The petitioner has come up with this Contempt Petition seeking to punish him for such contempt.

2. The facts of the case are as follows :- The Tamil Nadu Public Service Commission (hereinafter referred to as TNPSC) issued Advertisement No. 248 dated 21.07.2010 inviting applications for direct recruitment to the post of Village Administrative Officer in Tamil Nadu Ministerial Service (2009-2011) and Village Administrative Officer (Shortfall vacancies for SC/ST). Under the first category, 1576 vacancies were notified and under the second category viz., shortfall vacancies for SC/ST, 1077 vacancies were notified. Subsequently, another advertisement was issued under Advertisement No.256, dated 16.12.2010 modifying the vacancy position, thereby, notifying a total number of 3484 vacancies in the Tamil Nadu Ministerial Service for the post of Village Administrative Officer. The petitioners in the writ petition, numbering 24, like the other qualified candidates, made applications for the said post. Their applications were entertained and they were allowed to participate in the selection process, including the written examination. The results were published in July 2011. As per the said list, the petitioners were kept under the Reserve List. As per Rule 15-A of the Tamil Nadu State and Subordinate Service Rules, the Reserve List shall be in force until the Regular List is drawn up subsequently in the next selection process.

3. After the publication of the above results, the candidates who were in the main list were all called and they were appointed following the roaster. But the writ petitioners who were in the Reserve List were not called for appointment though there were number of unfilled vacancies as per the list. The unfilled vacancies should be filled up by operating the Reserve List. But, for the reasons best known to the TNPSC, the Reserve List was never operated and instead the TNPSC issued another advertisement (Vide Advertisement No.26/2012) on 09.07.2012 for recruitment for the year 2012-2013.

4. Some of the candidates, who were in the Reserve List filed a writ petition in W.P.No.15742 of 2012 before this Court seeking a mandamus, directing the TNPSC to fill up the unfilled vacancies from the Reserve List. When the said writ petition came up for hearing before this Court on 03.10.2012, the learned Standing Counsel appearing for the TNPSC submitted that TNPSC was taking steps to operate the Reserve List and fill up all the vacancies from out of the Reserve List. It was also stated that the details of vacancy position was awaited from the Government. Recording the same, the said Writ Petition was disposed of, directing the Tamil Nadu Public Service Commission to expedite the process of operating the reserve list to fill up the unfilled vacancies.

5. Yet another batch of candidates filed a writ petition in W.P.No.11772 of 2012, challenging the very advertisement issued under Notification No.26/2012 dated 09.07.2012 since before giving such advertisement the Reserve List should have been operated. That writ petition was dismissed. As against which writ appeal was filed before the Madurai Bench of this Court in W.A.(MD) No.1017 of 2012. In that writ appeal, the learned Standing Counsel appearing for the TNPSC again submitted that as per Rule 15-A of the Tamil Nadu State and Subordinate Service Rules, Reserve List was still in operation and that the petitioners would be considered for allotment to the post of Village Administrative Officer as and when their turn comes and when vacancies arise. Accordingly, the Writ Appeal was dismissed on 05.12.2012.

6. Even thereafter, the Reserve List was not operated. Therefore, yet another writ petition was filed before this Court in W.P. No. 30705 of 2012 by two other candidates, who are similarly placed. When that Writ Petition came up for hearing on 29.04.2013, the learned Standing Counsel submitted that the details of the vacancy position had been collected only from three districts and the TNPSC required further time to collect details from other Districts. Recording the same, this Court issued a

direction to act upon the information furnished by the Government regarding the vacancy position. Despite the above orders passed then and there and the undertaking given before this Court, the Reserve List was not operated.

7. It was under those circumstances, 24 candidates filed W.P. No. 10218 of 2014 before this Court, being aggrieved that they were not called for allotment of the posts by operating the Reserve List. But the respondent herein took a stand that as per the Advertisement No.26/2012 dated 09.07.2012, since the second list had been published, the earlier Reserve List could not be operated. During the course of the said proceedings, however, realising their mistake, the TNPSC filed an affidavit before this Court stating that there were 352 vacancies, which remained vacant or had fallen vacant between 15.09.2012 to 02.01.2013. In the affidavit, the TNPSC agreed to operate the entire remaining Reserve List and fill up all the 352 vacancies. The Secretary to Government, Revenue Department also agreed for the same. Therefore, this Court by order dated 17.06.2014 disposed of the Writ Petition, passing the following order:-

"27. In the result, the writ petition is disposed of in the following terms:-

i) The TNPSC shall operate the Reserve List mentioned above to fill up 352 vacancies, which either remained vacant or

fell vacant between 15.09.2012 and 02.01.2013.

ii) The Secretary to Government, Revenue Department is directed to furnish the actual vacancy position in each District. The names and Roll numbers of the candidates, who did not join or joined and left and their community and the category under which they were selected should also be furnished, so as to enable the TNPSC to adhere to roster system. It shall be done by the Secretary to Government, within a period of two weeks from the date of receipt of a copy of this order.

iii) After receipt of the above particulars from the Government, the TNPSC shall operate the Reserve List and adhere to roster system and other rules of reservation and shall fill up as far as possible all the 352 vacancies as One Time Measure. This exercise shall be completed within a further period of 6 weeks from the date of receipt of the particulars from the Government.

iv) It is further directed that out of the 352 vacancies, after the Reserve List is operated, if any more vacancies remain, the same shall be covered in Advertisement No.382, dated 17.03.2014 issued by TNPSC and shall be filled up accordingly. To this extent, Advertisement No.382, dated 17.03.2014 shall stand modified.

v) It is further clarified that going by the peculiar facts and circumstances of the case, this Court, by consent of parties, viz., the Government as well as TNPSC has issued the above direction to operate the Reserve List, though it is stated as per Rule 15-A, Reserve List loses its validity on or after 03.01.2013. Therefore, this order shall not be quoted as precedent for any purpose in future."

Now, out of the 24 persons, except the contempt petitioner, others were called by operating the Reserve List. But, some people got employment and others did not turn up. The grievance of the petitioner is that by operating the list, the petitioner was not called. This according to the petitioner is gross violation of the order of this Court dated 17.06.2014. With this complaint, the petitioner is before this Court with this Contempt Petition.

WEB COPY

8. When the Contempt Petition came up for hearing on 16.02.2015, the Joint Secretary, Tamil Nadu Public Service Commission Mrs.Saraswathi was present before this Court. She produced a copy of the Positional Note signed by the Secretary, TNPSC (contemnor herein). In the said

positional note, in paragraph 5 it is stated as follows :-

"5. Hence, out of 352 vacancy

particulars of not joined / joined and left candidates, 339 vacancies (paucity 1 vacancy) 338 candidates have been called for Certificate Verification and counselling as per the Communal rotation from Reserve List/ Below Reserve List for the said post. Out of the 338 vacancies, SC (G) vacancies were 74. Hence, a list of 74 SC (G) candidates (from 270 SC (G) candidates who are kept in the Reserve List) were called for Certificate Verification / Counselling and 41 SC (G) vacancies were filled up (including 12 of the writ petitioners in the W.P.No.10218 of 2014). The contempt Petitioner Thiru C.Raman is one among the 13 writ petitioners who were not selected as they have not reached the zone of consideration, as SC candidates upto 166th rank only were selected. As the contempt petitioner Thiru C.Raman is placed 220th place in the SC (G) Reserve List, he was not called for Certificate Verification and Counselling held from 27.10.2014 to 29.10.2014 in Commission's office."

WEB COPY

However, Mrs. Saraswathi, made an open statement that the entire Reserve List was not operated as directed earlier. She also submitted that no legal opinion was even obtained as how to operate the entire list as per the orders of this Court. Having seen the said Positional Note placed before

material to issue contempt notice to the respondent/contemnor. Accordingly, on 16.02.2015 Contempt Notice was ordered directing the contemnor to appear before this Court on 24.02.2015.

9. On that day, he filed an affidavit before this Court, which reads as follows :-

" 1. I am the Secretary, Tamil Nadu Public Service Commission, Chennai - 3 and i am well acquainted with the facts of the case from the records. I am filing this affidavit on behalf of the respondent.

2. I humbly submit that I have the highest respect and regard for this Hon'ble Court and the orders passed by this Hon'ble Court. I have not disobeyed the order of this Hon'ble Court as alleged by the petitioner. I am always conscious of the fact that I am bound by orders of this Hon'ble Court. I submit that I have not done and will not do anything that even indirectly could amount to disobedience of any order of this Hon'ble Court.

3. It is humbly submitted that out of the 805 Reserve List candidates, Reserve List was operated for 659 candidates till now. Hence there are only 146 candidates in the Reserve List to be given opportunity for filling up the 'not joined' and 'joined and left' vacancies provided by the Government. The following is the community wise break-up of the available list of 146 candidates.

Sl.No.	Community	No. of candidates available in Reserve List
1.	SC (G)	96
2	SC (DW)	5
3	SC (Ex)	1
4	SC (A)	19
5	MBC/DC	12
6	BC	9
7	Others	4
Total		146

4. It is humbly submitted that the Commission will call the remaining 146 candidates from the Reserve List and give allotment to them in their communal categories.

5. It is humbly submitted that by calling the remaining 146 candidates from the Reserve List for counselling, the Reserve List is exhausted and operated fully.

For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to discharge the Respondent herein from the Contempt proceedings and dismiss the above Contempt Petition and thus render justice. "

10. The learned Additional Advocate General, however, submitted that within four weeks from 24.02.2015, the remaining 146 candidates in the Reserve List will be called and will be selected and filled in the vacancies for the

Reserve candidates. The learned Additional Advocate General sought for four weeks time to complete the said exercise. Recording the said submission and recording the affidavit, the matter was adjourned to 26.03.2015.

11. When the matter came up for hearing on 26.03.2013 the respondent filed an affidavit where he has stated as follows :-

"3. It is submitted that in continuation of the Affidavit filed in C.P.No.182 of 2015 before the Hon'ble High Court on 24.02.2015, and in obedience to the orders of the Hon'ble Court the Hon'ble Commission has ordered to conduct the Certificate Verification and Counselling on 16.03.2015 for the remaining 146 candidates who were placed in the Reserve List pertaining to VAO 2009 - 2011 Recruitment.

4. Accordingly, Certificate Verification / Counselling was conducted in the Commission's Office on 16.03.2015 for all the 146 candidates in the Reserve List in which 83 candidates only have attended the Certificate Verification and 63 candidates have absented for the Certificate Verification.

5. It is submitted that among the 83 candidates present, one candidate Thiru K.Gopal (Reg. No.02329132) has claimed in his application that he is an Ex-serviceman. As he had worked only in CRPF establishment,

he could not be considered under Ex-Serviceman category. The candidate belongs to SC community and he has scored 208.50 marks while the cut off marks for SC (G) is 256.50. As he has not reached the zone of consideration he was not considered for selection under SC (G) category also, as there was no vacancy for him in his communal category.

6. It is further submitted that another candidate Tmt. K. Geethanjali (Reg.No.14608183) who belongs to GT-DW category could not be selected as there was "no vacancy" in the GT-DW category. Even the 352 vacancies furnished by the Government in August 2014, there were no vacancy under GT-DW category. Moreover, only in order to exhaust the entire Reserve List, all the 146 candidates were called up for Certificate Verification / Counselling on 16.03.2015. The said candidate belongs to "Others" Category and scored only 223.50 marks. The cut-off marks of the last candidate selected under GT-DW (Reserve List - II Phase) was 229.50. Hence, she was not given allotment orders. Hence out of 83 candidates who present for counselling 81 candidates were given allotment.

7. It is pertinent to mention here that all the 25 petitioners, who have filed the W.P.No.10218 of 2014 have got allotment from the Reserve List.

8. For the reasons stated above, it is humbly prayed that this Hon'ble

Court may be pleased to discharge the Respondent herein from the Contempt Proceedings and dismiss the above Contempt Petition and thus render justice."

12. Today the matter has again come up for hearing. The Contemnor is present. I have heard the learned counsel for the petitioner and the learned Additional Advocate General.

13. The learned counsel for the petitioner would submit that the petitioner has been given employment by operating the Reserve List. Learned Additional Advocate General would submit that not only the petitioner but all the other candidates in the Reserve List were all called and 81 candidates were given allotment. Thus it is submitted, as against 352 vacancies all the candidates in the Reserve List were all called and the candidates who appeared for counselling were considered as against the vacancies and accordingly given appointment. It is stated that out of 83 candidates, 81 candidates were given allotment. Thus, learned Additional Advocate General submitted that the order of this Court has been complied with.

14. The learned Additional Advocate General would submit that since the respondent has complied with the order, he may be discharged from contempt.

15. I have considered the said submission. As already pointed out, the legal fight by these poor candidates has been going on from 2012 onwards, commencing from W.P. No. 15742 of 2012. As already narrated number of writ petitions were filed, number of interim orders were passed and number of final orders were also passed, issuing specific direction to the TNPSC to operate the Reserve List. But the TNPSC has miserably (I am not inclined to call it as a wanton action) failed to follow the rules and the directions of this Court. Despite several orders passed and despite the last order in W.P. No. 10218 of 2014, it is not understood as to why the TNPSC did not obey the directions. This resulted in multiplicity of litigations wasting the time and money of these candidates. Eventually, though they have succeeded in the legal battle and secured employment, they have lost salary for at least three years and other incidental benefits. The TNPSC which is a constitutional functionary should conduct itself as a role model for the other Governmental Organisations in respecting the system under which the country is marching forward. The constitution and the people expect mutual respect for each other among the various wings of the Government. Unfortunately in this case, it is painful to say that the TNPSC had shown reluctance; if not indifference, to obey the directions of this court. But for this contempt petition, I am sure, the TNPSC, would not

have operated the reserve list in full. Had the petitioner herein [a lone candidate] been given employment, this petition would not have been filed in which event 81 candidates who have got employment now would not have been appointed. The Hon'ble Supreme Court in Arundhati Rai's contempt case has expressed its concern in the following words: "The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the said foundation is shaken by acts which tends to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded." In the light of the above observation of the Hon'ble Supreme Court, I have to say, "Rule of Law" which is the foundation of governance needs to be respected and followed unfailingly. A constitutional functionary is no exception. If courts' orders are not obeyed by the other wings of the Government, it is a threat to the Rule of Law. Obeying the judicial orders of the courts reflects the discipline of the orderly civilized society. In the instant case, going by the long legal battle, going by the repeated violations of the order of this Court and all the other circumstances, it may be concluded that the respondent has committed serious contempt, warranting him to face the legal consequences. But taking a very compassionate and generous view and accepting the assurance

given by the learned Additional Advocate General that the TNPSC, will follow the rules and obey the orders of this Court without any dereliction in future, so as to serve the people of this country in the way in which they are required to function, I am inclined to discharge the contemnor. I only wish that this Court may not have yet another unfortunate occasion in future to deal with a similar contempt petition against the TNPSC. The contemnor in the affidavit has also tendered his unconditional apology which in my view is sincere and unconditional.

16. In view of all the above, the contempt petition is closed and the contemnor is discharged.

avr/kmk

SD/
DEPUTY REGISTRAR(OS)

//Certified to be true copy//

Dated at Madras this the day of 2015.

सत्यमेव जयते

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

SS/CO/14/05/2015

One CC to Mr.M.Devendran, Standing Counsel for TNPSC,
SR.4581

To

- 1.The Secretary, Tamil Nadu Public Service Commission,
No.3, Frazer Bridge Road, V.O.C Nagar, Chennai - 600 006.
- 2.The Advocate General, High Court, Madras.
- 3.The Government Pleader, High Court, Madras.