

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

WRIT APPEAL NOS.1950 OF 2013 AND 324 OF 2015 & M.P.NOS.1 AND 1
OF 2015

W.A.No.1950 of 2013 :

1.THE DISTRICT COLLECTOR
NAGAPATTINAM, NAGAPATTINAM
DISTRICT.

2.THE CHIEF EDUCATIONAL OFFICER
NAGAPATTINAM, NAGAPATTINAM
DISTRICT.

...APPELLANTS

Vs

1.S.RAMASAMY
2.K.KARUNANIDHI
3.P.DURAIARASAN
4.J.JEEVAMBAL
5.K.VEERAMANI
6.S.PUGALENTHI
7.V.SEKAR
8.T.A.CHINNA DURAI
9.D.NAVANEETHAM
10.R.ANBUMANI
11.V.KUMAR
12.S.MILLER
13.K.RAVICHANDRAN
14.M.JAGADEESGWARA KANNAN
15.S.MANGAYARKARASI
16.G.PANDIYAN
17.A.KALAIRANI
18.V.VELPARI
19.A.ARULMOZHI
20.K.VADIVEL
21.K.KARTHIKEYAN
22.K.RAVICHANDRAN

...RESPONDENTS

W.A.No.324 of 2015 :

1.THE STATE OF TAMILNADU, REP.BY
THE SECRETARY, HOME DEPARTMENT,
FORT ST. GEORGE, CHENNAI-1

2.THE DISTRICT COLLECTOR,
NAGAPATTINAM.

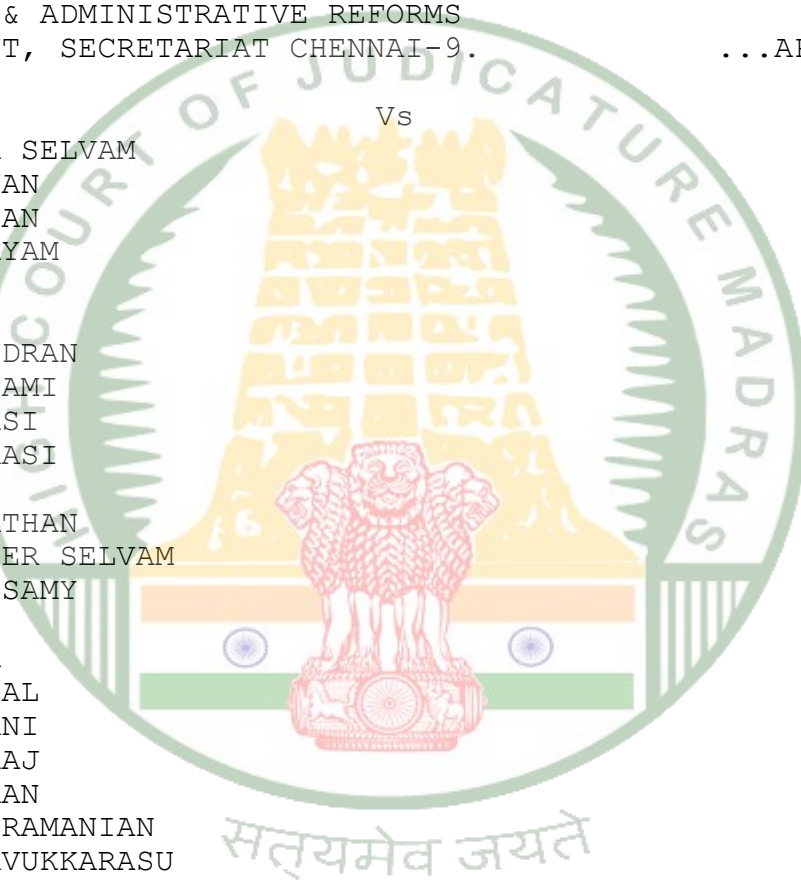
3.THE CHIEF EDUCATIONAL OFFICER,
NAGAPATTINAM.

4.THE SECRETARY TO THE GOVERNMENT,
PERSONEL & ADMINISTRATIVE REFORMS
DEPARTMENT, SECRETARIAT CHENNAI-9.

...APPELLANTS

Vs

1.V.M.PANNER SELVAM
2.M.LAKSHMANAN
3.R.KANNADASAN
4.J.DEIVASHAYAM
5.K.VALLAVAN
6.P.ASOKAN
7.S.RAVICHANDRAN
8.V.PAKKIRISAMI
9.T.EZHILARASI
10.N.TAMILARASI
11.G.DURAI
12.N.VISWANATHAN
13.T.P.PANNEER SELVAM
14.A.PAKKIRISAMY
15.K.SEKAR
16.N.SUKUMAR
17.G.RAJAGOPAL
18.N.MARAIMANI
19.R.THAMBIRAJ
20.V.RAJENDRAN
21.T.BALASUBRAMANIAN
22.K.THIRUNAVUKKARASU
23.M.VIJAYARANI
24.R.RAMAMURTHY
25.J.NEELAYATHASHI
26.G.MARAN
27.M.MANGALESWARI
28.P.SINGARAVEL
29.S.AYYUBHKAN
30.S.GOMATHI
31.P.PARIVAENDAN
32.P.ANANDRAJ
33.P.KAMALASELVI
34.P.ANANTHI
35.N.SELVAGANAPATHI



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36.C.THAVAMANI
37.P.BOOMINATHAN
38.L.SHANTHI
39.N.KALAIYARASI
40.G.PADMAVATHI
41.K.SAKTHIVEL
42.P.RAGHU
43.S.AMITHALINGAM
44.K.ALAGARASAMY
45.S.SUMATHI

...RESPONDENTS

APPEALS under Clause 15 of the Letters Patent against (i) the order dated 5.7.2012 made in W.P.No.18208 of 2008 Petition filed under Article 226 of the constitution of India to issue a writ of mandamus directing the respondents to appoint the petitioners in a suitable post in the light of the proceedings of the second respondent in Na.Ka.No.26417/2003 A-3, dated 08.07.2003 by applying G.O.Ms.No.85, dated 04.07.2003 on the file of the first respondent herein. and (ii) the order dated 20.3.2012 made in W.P.No.558 of 2005 Writ Petition has been filed under Article 226 of the Constitution of India for issuance of writ of Declaration declaring that the selection process conducted to the post of Junior Assistant by the 3rd respondent from among the list forwarded by the 2nd respondent in Na.Ka.No.26417/2003 A3 dated 08.07.2003 and the consequential appointment of the respondents 4 to 28 as null and void and direct the 3rd respondent to consider the petitioners for appointment as Junior assistant in those vacancies.

For Appellants

in both the appeals :

Mrs.Srijayanthi, SGP

For Respondents 1 to 22

in W.A.No.1950 of 2013 :

Mr.Harris Alfred

For Respondents 2, 3, 5 to 7,

9 to 11, 13 to 16, 18 & 19 in

W.A.No.324 of 2015 :

Mr.V.Chandrasekaran

R4, R17, R22, R26, 36 & 38 :

Not ready in notice

(Intimation to be given)

For R1, R8, R20, 23 to 25, R27,

R29 to R34, 37, 40 & 44 in

W.A.No.324 of 2015

: No appearance

For R12, R35, R39, R42 & R45

in W.A.No.324 of 2015

: Service awaited

For R28 & R41 in

W.A.No.324 of 2015

: Mr.A.Muthukumar

For R21 in W.A.No.324 of 2015 : Mr.P.Vijendran

For R43 in W.A.No.324 of 2015 : M/s.K.M.Vijayan
Associates

COMMON JUDGMENT

(JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN, J)

Both these appeals are by the State, questioning the correctness of the orders passed by two different learned Judges in two different writ petitions granting relief to the contesting respondents herein.

2. Heard Mrs.Srijayanthi, learned Special Government Pleader for the appellant, Mr.V.Chandrasekaran and Mr.Harris Alfred, learned counsel appearing for the contesting respondents herein/writ petitioners and Mr.A. Muthukumar, learned counsel appearing for those, who were the contesting respondents in one of the writ petitions.

3. From 2.7.2003 onwards, the Government servants through out the State went on a strike. Nagapattinam District was also a place where all the Government servants except Tahsildars went on strike.

4. In order to tide over the crisis, the Government issued G.O.Ms.No. 85 P & AR dated 4.7.2003 directing the Commissioner of Employment and Training to give suitable instructions to all Employment Exchanges to send a list of eligible candidates possessing the minimum general educational qualifications and who have registered in the respective Employment Exchanges. The list of candidates were directed to be sent to the District Collectors concerned by following the rule of reservation under General Rule 22. It is made clear in the said Government Order that 500 temporary supernumerary posts of Junior Assistants in each district were created under General Rule 11 of the Tamil Nadu State and Subordinate Services Rules in the Tamil Nadu Ministerial Service. What is important to note is that in paragraph 2 of the said order, it was indicated that the District Collector will prepare a distinct pool in his Collectorate, from which, the appointments are to be made.

5. As per the directions given by the Government, the District Collector called for a list of persons from the Employment Exchange. The names of the contesting respondents herein and the other respondents were also sponsored by the Employment Exchange. Unfortunately, at the time when the appointments were made, the names of the contesting respondents

herein were left out. However, the other persons, who are allegedly junior in the rolls of the Employment Exchange to the contesting respondents herein, were appointed.

6. Therefore, complaining that the rule of seniority of registration and the rule of reservation were violated in the matter of appointment, one set of persons filed W.P.No.558 of 2005. The said writ petition was allowed by a learned Judge of this Court by an order dated 20.3.2012 with the following directions :

"In the result, the writ petition is allowed in the following terms :

(i) The impugned order of the second respondent, in so far as it relates to denial of posting orders to the petitioners is concerned, is set aside.

(ii) The respondents 1 and 2 are directed to issue posting orders to the petitioners as Junior Assistants and allow them to join duty within eight weeks from the date of receipt of a copy of this order.

(iii) The Government is directed to hold special competitive examination through the Tamil Nadu Public Service Commission as it was done in the case of the other candidates as stated above and absorb them on permanent basis on the results of the said special competitive examination and

(iv) In the event the petitioners do not emerge successful in the special competitive examination, they will be allowed to continue in service on consolidated pay like the other 26 persons who have been allowed by the Government to work in various departments."

7. Aggrieved by the said order, the State of Tamil Nadu has come up with W.A.No.324 of 2015. In the meantime, another set of candidates, who were similarly placed as the writ petitioners in W.P.No.588 of 2005, came up with a separate writ petition in W.P.No.18208 of 2008 seeking a similar prayer. That writ petition was allowed by another learned Judge by an order dated 5.7.2012, based upon the order in W.P.No.588 of 2005. As against the order dated 5.7.2012, the District Collector, Nagapattinam came up with W.A.No.1950 of 2013.

8. In the counter filed by the Government to the first writ petition in W.P.No.588 of 2005, it was stated that the District

Employment Officer, Nagapattinam was requested to sponsor a list of 500 candidates with 155 belonging to the general category, 155 belonging to backward classes, 95 belonging to most backward classes and 95 belonging to scheduled caste, making up a total of 500. The Employment Officer appears to have given two types of lists namely non priority list and priority list from among the candidates belonging to scheduled caste, most backward classes, backward classes and open categories with reference to the cut off date taken on the basis of the date of registration in the rolls of the Employment Exchange.

9. Thereafter, the Collector appears to have given postings to persons upto S.No.356 and they were allotted to various departments. Persons, whose names were found from S.No.357 onwards, were not appointed. Thereafter, it appears that 25 persons were randomly appointed with the qualification of type writing and computer operations. It is those appointments that are assailed by the writ petitioners as violative of the rule of seniority and the rule of reservation.

10. What the learned Judge found was that when type writing and computer operations are not fixed as essential qualifications, the District Collector could not have short-listed a few candidates by applying such a qualification.

11. But, in cases of this nature where the appointments are made (i) on temporary basis and (ii) to supernumerary posts, the rules themselves do not apply. The post of Junior Assistant is a post that falls within the purview of the Tamil Nadu Public Service Commission. Any appointment made otherwise than through a process of selection by the Tamil Nadu Public Service Commission, is only an irregular appointment and can be made only under Rule 10(a)(i) of the General Rules for Tamil Nadu State and Subordinate Services.

12. Therefore, the short-listing of 25 candidates on the basis of their qualification in type writing and computer operations to temporary posts created on supernumerary basis to tide over a crisis cannot be said to be arbitrary. In writ petitions of this nature, what is required to be tested is as to whether the writ petitioners had acquired a legal and vested right to seek appointment. The petitioners were only short-listed. As we have pointed out earlier, paragraph 2 of G.O.Ms.No.85 dated 4.7.2003 makes it clear that the Collector had to prepare only general pool of 500 candidates and make appointments from the general pool to the needy departments. If that is so, we do not know as to whether the mere sponsoring of candidates by the Employment Exchange would confer a right upon the writ petitioners. In view of the above, we find that the orders of the learned Judges cannot be sustained.

13. Accordingly, the writ appeals are allowed and the orders of the learned Judges are set aside. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To;

1.THE DISTRICT COLLECTOR
NAGAPATTINAM,
NAGAPATTINAM DISTRICT.

2.THE CHIEF EDUCATIONAL OFFICER
NAGAPATTINAM, NAGAPATTINAM
DISTRICT.

3.THE SECRETARY TO THE GOVERNMENT,
THE STATE OF TAMILNADU,
FORT, ST.GEORGE,
CHENNAI.

4.THE SECRETARY TO THE GOVERNMENT,
PERSONAL ADMINISTRATIVE REFORMS
DEPARTMENT, FORT ST.GEORGE,
CHENNAI.

+1cc to Haris alfred, Advocate sr.59759
+1cc to The Government Pleader sr.59622
+1cc to V.Chandrasekaran, Advocate Sr.60228

W.A.Nos.1950 of 2013 & 324
of 2015 & MP.Nos.1 & 2/2015

vs[co]
srg 22/12/2015

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