



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:- 02.09.2016

Coram:-

**The Hon'ble Mr. Justice T.Raja**

WP (MD) Nos.10783 and 10820 of 2015

and

M.P. (MD) Nos.1 and 1 of 2015

WEB COPY

WP (MD) No.10783 of 2015:-

M.Pradeepa

... Petitioner

vs.

1. The Secretary to Government,  
Hindu Religious and Charitable  
Endowments Administration Department,  
Government of Tamil Nadu,  
Fort St. George,  
Chennai.

2. The Commissioner,  
HR & CE Department,  
Chennai.

3. The Secretary,  
Tamil Nadu Public Service Commission,  
Chennai.

... Respondents

WP (MD) No.10820 of 2015:-

K.Marimuthu

... Petitioner

vs.

1. Tamil Nadu Public Service Commission,  
Rep. by its Secretary,  
Commercial Taxes Building - Annex,  
1, Greaves Road, Chennai.

2.The Commissioner,  
Tamilnadu Hindu Religious and  
Charitable Endowment,  
Uthamar Gandhi Salai,  
Nungambakkam,  
Chennai 600 034.

... Respondents

W.P. (MD) No.10783 of 2015:- Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus, calling for the records relating to the impugned memorandum No.3032/OTD-B4/2011, dated 16.06.2015, passed by the 3<sup>rd</sup>



respondent and to quash the same and consequently, direct the respondents to appoint the petitioner in the post of Executive Officer Grade-I in the Hindu Religious Endowments Administration Department.

W.P. (MD) No.10820 of 2015:- Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus, directing the respondents to consider the case of the petitioner for selection to the post of Executive Officer Grade-I in the Tamilnadu Hindu Religious and Charitable Endowments Subordinate Service included in Ground VII-A services for the year 2009-2010 and 2010-2011 in the vacancy caused due to the relieving of one Mr.G.Kaniraj, based on the Reserve List, dated 01.08.2014, within the time-limit that may be fixed by this Court.

For petr. in WP (MD)

No.10783/2015 : Mr.G.R.Swaminathan

For petr. in WP (MD)

No.10820 of 2015 : Mr.G.Thalaimutharasu

For TNPSC in both

the Cases : Mr.K.K.Senthil

(R3 in 10783 & R1 in WP.10820/15)

For HR&CE Department

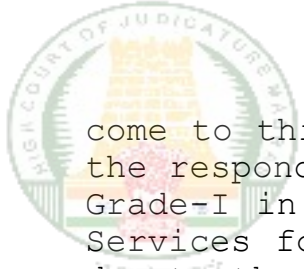
in both the cases : Mr.Aayiram K.Selvakumar,

(R1&R2 in 10783 & R2 in 10820/15) Government Advocate.

- - - - -  
COMMON ORDER

The petitioner in W.P.MD.No.10783 of 2015/Mrs.M.Pradeepa challenges the impugned Memorandum issued by the 3<sup>rd</sup> respondent/Secretary, Tamil Nadu Public Service Commission (hereinafter referred to as the 'TNPSC'), whereby, she was informed that the result of the subsequent recruitment for the post of Executive Officer (in short, 'EO') Grade-I in the Tamil Nadu Hindu Religious and Charitable Endowments (HR&CE) Subordinate Service included in Group-VIIA Services for the year 2011-2014 has been finalized on 17.09.2014 by means of counselling mode and hence, the Reserve List, dated 01.08.2014, for the said post pertaining to 2009-2011 got lapsed. Since the petitioner, who is at Serial No.1 against MBC/DC-W(PSTM) Category in the Reserve List, dated 01.08.2014, issued by the TNPSC, was denied appointment to the post of Executive Officer, Grade-I in the HR& CE Subordinate Services on the ground that the Reserve List for the relevant period stood lapsed, she is before this Court.

Similarly, the petitioner in W.P. MD. No.10820 of 2015-Mr.K.Marimuthu, who is placed at Serial No.1 against SC-General Category in the Reserve List, dated 01.08.2014, of the TNPSC, aggrieved by non-consideration of his name for appointment to the post of E.O. Grade-I due to non-operation of the Reserve List, has



come to this Court seeking issuance of a writ of mandamus to direct the respondents to consider his case for selection to the post of EO Grade-I in the HR & CE Subordinate Service included in Group VII-A Services for the year 2009-2010 and 2010-2011 in the vacancy caused due to the relieving of one Mr.G.Kaniraj, based on the Reserve List, dated 01.08.2014.

Since both the cases are interconnected, they are disposed of by this Common Order.

2. Mr.G.R.Swaminathan, learned counsel appearing for the petitioner in W.P. MD. No.10783 of 2015, would submit that the petitioner, who is a Master Degree Holder in Law, responded to a Notification, dated 02.04.2012, issued by the TNPSC to fill up 14 vacancies of EO Grade-I in the HR&CE Administration Department for Group-VII A Services relating to 2009-10 & 2010-11, by applying for the said post. After attending the written examination with Registration No.01002737, she secured 387 marks and subsequently, in the oral test conducted by the TNPSC vide proceedings, dated 11.07.2014 in Memorandum No.3032/OTD-B4/2011, she was awarded 42 marks, thus, the Total Mark secured by her was  $387+42 = 429$ . When the TNPSC issued the list of selected candidates, her name appeared in the 2<sup>nd</sup> list and, as per the proceedings of the TNPSC, dated 01.08.2014, she was informed that she was not selected for appointment, however, her name was included in the Reserve List at Serial No.1 against MBC/DC-W(PSTM) Category. Pausing here, learned counsel for the petitioner would highlight that, in the said proceedings of the TNPSC, dated 01.08.2014, the petitioner was duly informed that the Reserve List would be in force until the drawl of next selection list for the said post by the TNPSC. Further, it was also made clear therein that the Reserve List would be taken into consideration in favour of the petitioner against the vacancies caused due to - i)Non-joining of selected candidates; ii)Selected candidates who joined duty but left thereafter; and, iii) Cancellation of provisional selection of the selected candidate for any reason. According to the learned counsel, as per the aforesaid proceedings, it goes without saying that if any selected candidate fails to join duty, the respondents should resort to the Reserve List. While so, one Selvi.Vidya, a selected candidate from MBC-DC-W (PSTM) Category, did not join duty, whereupon, the petitioner herein, who belongs to the very same Category and already placed by the TNPSC at Serial No.1 in the Reserve List, submitted a series of representations, dated 03.02.2015, 02.04.2015 and 20.05.2015, requesting both the TNPSC and the HR&CE Department to operate the Reserve List in her favour on the ground that the said Vidya, who was selected under the same Category, failed to join duty as she has already got a comfortable Government Job. Even six months after the said Vidya not reporting for/joining duty, without taking any step to operate the Reserve List, by citing a vague reason that the result of the subsequent recruitment for the said post for the years 2012-2014 was finalised by calling the candidates for counselling on 17.09.2014 itself to fill up vacancies, now, the respondents unjustly declared that the Reserve List got lapsed.



3. Learned counsel, by referring to a decision rendered by this Court on 25.07.2008 in WP.MD.No.19612 of 2007 (Dr.D.Karal Versus State of Tamil Nadu, rep. by its Secretary & Others), would submit that, in the said case, faced with a similar issue, this Court had ruled that when candidates are placed in the Reserve/Waiting List, as per the statutory proviso to Rule 10(a)(i) of the State and Subordinate Service Rules, the reserve list candidates have a right to get appointed, if the selected candidates failed to join duty in time by one reason or the other. It was further ruled that the right of the Reserve List candidates gets crystallized the moment the last date for reporting to duty of the selected candidates are over and the reserve list candidates are deemed to be selected in the resultant vacancies by operation of law and as such, they will get an indefeasible right for their appointment.

A decision of mine, pronounced on 23.12.2011 in W.P.MD. No.12468 of 2009 (D.Vijay Ananth v. The Secretary to Government and others), has been relied upon to highlight the point that a candidate in the Waiting List in the order of merit has a right to claim that he may be appointed if one or other selected candidates failed to join duty.

In the light of the same and also, by taking note of the genuine grievance of the petitioner that the respondents purposely failed to resort to the Reserve List irrespective of the fact that a selected candidate in the same category as that of the petitioner admittedly did not join duty, this Court may issue a favorable direction by setting aside the impugned proceedings, he pleaded.

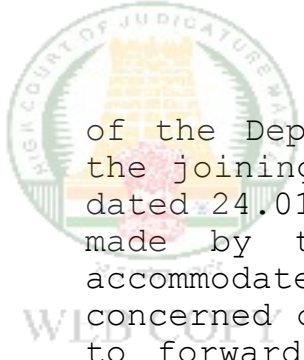
4. In the same line, Mr.G.Thalaimutharasu, learned counsel appearing for the petitioner in W.P. MD. No.10820 of 2015, would submit that the petitioner-K.Marimuthu, who also applied for the said post of E.O. Grade-I in the HR&CE Administration Department, participated both in the written and oral test and secured 403.50 and 60 marks respectively, in total - 463.50 marks. His name, although not found in the provisional selection list, was placed at Serial No.1 against the Scheduled Caste-General Category. The period for which the Reserve List would be in force and the contingencies for operation of the Reserve List were the same as mentioned in respect of the other petitioner/M.Pradeepa. Learned counsel for the petitioner would point out that, while so, one of the selected candidates by name G.Kaniraj belonging to SC-General Category, after joining duty on 15.02.2013 left the job voluntarily to join service as Assistant Section Officer in the Municipal Administration and Water Supply Department and further, necessary relieving orders were also issued in his favour, enabling him to join duty as Assistant Section Officer. Having come to know of the said development which had given a room for operation of the Reserve List in which, the petitioner is at Serial No.1 against the very same category as that of Mr.Kaniraj, the petitioner made a representation, dated 15.08.2014, requesting the respondents to accommodate him in the vacancy arose due to relieving of Mr.Kaniraj, but, in vain. A Reminder, dated 12.09.2014, was also sent to the



respondents, however, without taking any proper action on his representation and reminder, requesting to operate the Reserve List, the respondents proceeded to issue another Notification for recruitment to the post in question. That being so, when one of the contingencies for operation of the Reserve List, as given by the TNPSC, to the effect "*selected candidates who joined duty but left thereafter*" has admittedly taken place in this case and when the said factum was also immediately brought to the notice of the authorities through the aforesaid representation/reminder, requesting them to resort to the Reserve List so as to accommodate the petitioner, who also admittedly belongs to the same category as that of the individual-Mr.Kaniraj, who voluntary left the job, the action of the respondents in not coming forward to accede to the plea of the petitioner, who is presently aged about 41 without any scope or prospects for future placement in Government Service, is absolutely unjust and unreasonable, hence, it is a well-deserving case for issuance of a positive direction, he pleaded.

5. Per contra, Mr.K.K.Senthil, learned counsel appearing for the TNPSC, by referring to the counter affidavit, would submit in respect of W.P. MD.No.10783 of 2015 that, out of the 14 vacancies, 4 reserved for Women-PSTM candidates could not be filled up due to paucity of Women-PSTM candidates. As no women candidates who studied the Degree Course in Tamil Medium was available in the Ranking List, the TNPSC decided to fill up the said 4 PSTM vacancies with non-PSTM women candidates having regard to communal status. The petitioner, who was called for the second phase of the counselling held on 21.07.2014, could not be selected since she only secured 429 marks as the last women candidate against the MBC/DC-W (PSTM) category had obtained 441 marks, however, she was placed at Serial No.1 in the Reserve List under the said Category. In regard to the grievance of the petitioner that her representation, dated 20.05.2015, requesting the TNPSC to operate the Reserve List over a selected candidate by name Selvi.Vidya not joining duty, was not favourably considered, learned counsel would say that the result of the subsequent recruitment for the said post relating to 2012-2014 was finalized by calling the candidates for counselling on 17.09.2014 itself to fill up vacancies for the said post. According to him, a Reserve List drawn for a post will be valid only till the next selection list for the post is drawn by the Commission. Therefore, on the face of it, the Reserve List for the years 2009-2011 having stood lapsed, her plea could not be considered. According to him, the case and claim of the petitioner revolving around a lapsed list deserve no consideration at all and hence, the writ petition may have to be dismissed.

6. In regard to W.P.MD.No.10820 of 2015, Mr.K.K.Senthil would submit that, of course, the petitioner, who has been placed at Serial No.1 of the Reserve List against SC-General Category, through his representation dated 15.08.2014, by citing the instance of Mr.G.Kaniraj, who left the job after joining the post, requested to accommodate him by operating the Reserve List. But, when the Head



of the Department concerned of the HR&CE was intimated to furnish the joining particulars of selected candidates vide TNPSC's Letter, dated 24.01.2013, in order to operate the Reserve List, no reply was made by them. Again, on a request from the petitioner to accommodate him, the TNPSC not only contacted the Department concerned over Phone but also addressed a letter, dated 15.09.2014, to forward the joining particulars of the candidates in order to take further action. But, by the time the Department could send the particulars on 26.09.2014 to the effect that Mr.G.Kaniraj, who joined duty, left the job voluntary, the result of the subsequent recruitment for the post in question relating to 2012-2014 was released by calling the candidates for the counselling scheduled on 17.09.2014 to fill up the vacancies against the said post. Thus, the reserve list could not be operated as it had lapsed due to the drawal of next selection for the years 2012-2014. By referring to a decision of the Apex Court in Surinder Singh and others vs. State of Punjab and another (1997-8-SCC-488) and highlighting the observation made therein to the effect that candidates included in the waiting list cannot claim appointment on the ground that vacancies were not worked out properly, learned counsel pleaded for dismissal of the writ petition.

6-A. No counter affidavit has been filed by the HR & CE Department to project their stand individually, however, learned Government Advocate appearing for the HR & CE adopting the submissions made by Mr.K.K.Senthil, would reiterate that since the proceedings under the subsequent Notification have commenced and thereby, the Reserve List lost its validity, the petitioners cannot build up a case based on the said List and hence, both the writ petitions may have to be dismissed.

7. In these writ petitions, the issue for discussion and decision is as to whether the respondents are justified in not operating the Reserve List on the ground, by the time the case of the petitioners could be considered, subsequent Notification in respect of the post in question came to be given effect to, particularly when the contingencies mentioned by the TNPSC for operation of the Reserve List, admittedly, had come into existence and the said factum was also timely brought to their notice by the petitioners?

8. While taking up the case of Mrs.M.Pradeepa, it is seen from the records that, by proceedings dated 11.07.2014 of the TNPSC in Memorandum No.3032/OTD-B4/2011, the petitioner was directed to present herself at the Office of the TNPSC during the second phase of counselling for Certificate Verification at 10 A.M. and for the Oral Test at 1 P.M. on 21.07.2014. Accordingly, she took part therein and, by Memorandum, dated 01.08.2014, issued by the TNPSC, she was informed that she was not selected for appointment to the post in question, however, her name was included in the Reserve List in the category of MBC/DC-W (PSTM) at Serial No.1. It is pertinent to extract below the relevant portion below from the aforesaid Memorandum, dated 01.08.2014:-



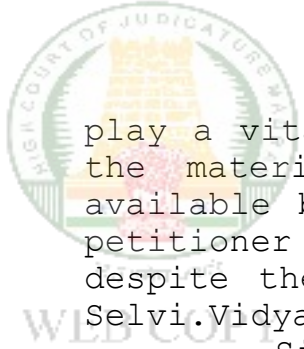
" Tmt/Selvi.PRADEEPA M (Register No.01002737) is informed that he/she has not been selected for appointment to the post of Executive Officer, Grade I, in the Hindu Religious and Charitable Endowments Administration Department in the Tamil Nadu Hindu Religious and Charitable Endowments Subordinate Service, included in Group VIIA Services, for the years 2009-2010 & 2010-2011.

2. However, her name has been included in the Reserve List in the category of MBC/DC-W (PSTM)-(001). His/her position in the reserve list against the above said category is mentioned in the brackets.

3. The Reserve List will be in force until the drawal of next selection list for this post by the Commission, for the selection of candidates there from, against the vacancies caused due to any of the following reasons:-

- (i) Non-joining of selected candidates.
- (ii) Selected candidates who joined duty but left thereafter.
- (iii) Cancellation of provisional selection of the selected candidate for any reason."

Accordingly, in line with the reasons/contingencies given for operation of the Reserve List, after coming to know that Selvi.Vidya, a selected candidate and who belongs to the very same category as that of the petitioner, did not come forward to join duty, the petitioner, through representations dated 03.02.2015, 02.04.2015 and 20.05.2015, brought to the notice of the TNPSC the said factum of Selvi.Vidya not coming forward to join duty and also the oral information given to her by the authorities to wait for 6 months as well as lapse of even the said 6 months' time. When the respondents/TNPSC & HR&CE Department have been saddled with the obligation to verify as to whether any of the contingencies fixed for resorting to the Reserve List has arisen, in the case on hand, even though the petitioner herself has been time and again bringing it to the notice of the authorities through her continuous representations that a selectee/Miss.Vidya under the same category did not come forward to join duty, very unfortunately, her plea was never considered with a sense of seriousness. Even though counter affidavits by the TNPSC have been filed in these matters, the same lack in material particulars like date of the appointment orders issued in favour of Selvi.Vidya and Mr.G.Kaniraj, the time-limit prescribed for them to join duty, default clause, exact expiry date of the Reserve List, etc. Therefore, it goes without saying, when there is a Reserve List brought into existence by the respondents with contingency Nos.1 and 2 as extracted above, the joining date mentioned in the appointment orders as well as the default clause



play a vital role for resorting to the Reserve List. Conveniently, the material particulars on those aspects have not been made available before this Court by the respondents. Unfortunately, the petitioner was allegedly intimidated to keep quiet for 6 months despite the fact that she sincerely conveyed the authorities that Selvi.Vidya never came forward to join duty.

Similarly, in the case of Mr.K.Marimuthu, the papers available in the typed set clearly show that Mr.G.Kaniraj in whose place, accommodation was sought for, was relieved way back on 03.01.2014. That being so, it is very unfortunate to see the present stand of the respondents that, by the time they could take steps to consider the pleas of the petitioner, the counselling in respect of the next notification came to be scheduled on 17.09.2014 and thereby, the effect of the Reserve List based on which the petitioners claim appointment was taken away. Such reason does not stand to any logic since the chain of events having regard to the first two contingences seemed to have occurred well prior to commencement of the proceedings in respect of the second Notification for the years 2012-2014. In other words, in both these cases, there was no impediment at all for the Department to proceed for operating the Reserve List since the petitioners concerned sincerely and timely approached them with all requisite particulars and the vacancies in which they sought to accommodate them are also against the same communal category.

9. In the above scenario, an allied issue needs to be discussed is, when both the petitioners are admittedly placed at Serial No.1 in the respective categories viz., MBC and SC, whether they can have a "vested right" to be appointed to the post in question over non-joining of a selected candidate or a selected candidate leaves the job after joining duty?

10. The answer for the above issue can be directly had from Surinder Singh's Case (cited supra), referred to by none else than the learned counsel appearing for the TNPSC. In this regard, relevant portion from the aforesaid case-law may be extracted below:-

" 14. The High Court in the impugned judgment had noted a decision of this Court in Gujarat State Dy. Executive Engineers Association v. State of Gujarat & Ors., [1994] Supp. 2 SCC 591 and relying on that had quashed the appointment of the teachers over and above that advertised. We may refer to paras 8 and 9 of the judgment which we reproduced as under :

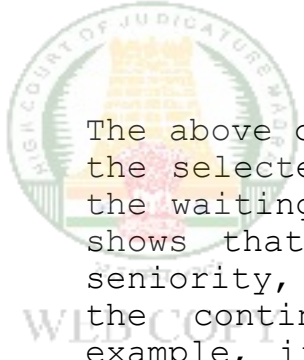
"Coming to the next issue, the first question is what is a waiting list?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary?; and lastly how long can it operate? These are some Important questions which do arise as a result of direction issued by the High Court. A waiting



WEB COPY

list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided than candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the Selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

9. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancies so caused....." (emphasis supplied)



The above observation of the Apex Court to the effect that if any of the selected candidate does not join the post, then the person from the waiting list may be appointed in the vacancy so caused, clearly shows that the candidates in the Reserve List, in the order of seniority, have got a vested right for appointment on occurrence of the contingencies indicated by the appointing authority. For example, if there are 10 candidates in a Reserve List and, in the event of 5 selected candidates in the respective cadre failing to join duty within the time stipulated, immediately on expiry of the time prescribed for joining duty, the first 5 candidates in the respective Reserve Lists have got a vested right to be appointed. In fact, the above decision does not endorse only the vigor of a Waiting List/Reserve List where the instance pertains to "vacancies not advertised". In other words, the observation that a waiting list cannot be used as a perennial source of recruitment for filling up the vacancies "not advertised" has no relevance at all to a phenomenon like the present case having semblance to the aforementioned example.

11. When a similar issue came up for consideration before this Court in Dr.D.Karal's Case (cited supra), it has been held as follows:-

" 9. The learned counsels appearing for the respondents are also not justified in contending that merely because the petitioners' names were included in the reserve list, the same will not confer any right to them. It is an admitted fact that the petitioners are placed in the reserve/waiting list. As per the statutory proviso to Rule 10(a)(i) of the State and Subordinate Service Rules, the reserve list candidates have a right to get appointed, if the selected candidates failed to join duty in time by one reason or the other. The rights of the reserve list candidates gets crystallized the moment the last date for reporting to duty of the selected candidates are over and the reserve list candidates are deemed to be selected in the resultant vacancies by operation of law and as such they will get an indefeasible right. It is the legal obligation of the respondents to issue appointment orders to the reserve list candidates. The non-communication of the vacancy position by the Department in time to the second respondent will not affect the accrued right of the reserve list candidates. If the respondents fail to discharge their statutory obligation, the petitioners have got every right to seek appointment on the basis of the availability of vacancies due to non-joining of the selected candidates. The petitioners' right to get selected cannot be allowed to be defeated by the inaction of the respondents. If the same is permitted, the respondents can defeat the rights of the reserve listed candidates though the selected candidates



failed to join in time, which is to be treated as arbitrary and capricious and violative of Articles 14 and 16 of the Constitution of India. Thus, the second respondent is bound to release the petitioners' names for appointment in the vacant posts, which arose due to non-joining of the selected candidates.

10. Similar issue was considered by a Division Bench of this Court in the decision reported in 2008 (3) LW 222 (The Secretary, Tamil Nadu Public Service Commission v. R.Nagarajan & Others). In paragraphs 12 to 16, the Division Bench considered the operation of reserve list in respect of selection of Assistant Public Prosecutors, even after the subsequent selection, which was ordered subject to the pendency of the earlier writ petition."

12. I myself had an occasion to deal with a similar issue in W.P. MD.No.1468 of 2009, wherein, vide Orders dated 23.12.2011, by following a decision of the Apex Court in Gujarat State Dy. Xen Association vs. State of Gujarat (1994 (3) JT 559), it was held by me that a candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate failed to join the post. Relevant portion from the aforesaid order may be reproduced below for better appreciation:-

" 9. It is further submitted that even before the impugned order was passed, the TNPSC has sent a letter to the second respondent to inform the cases of non-joining candidates for removal of their names from the approved list as required in Rule 24 of the TNPSC Rules of Procedure, 1996, and the proposal for allotment of candidates from the Reserve List within 6 months from the date of communication of the appointment orders to the candidates. But, the second respondent did not send any proposal for deletion of the names who have not joined the duty and for allotment of substitutes from the Reserve List drawn for the post of Sub-Registrar Grade II till 16.11.2009. Thereafter, on 17.11.2009, the selection list for the subsequent recruitment to the CSSE-1, recruitment 2008-2009, was published and consequently, the Reserve List in question i.e., Reserve List of CSSE-1, 2007, lapsed as per the Rule 15(A) in Rule 2 Part-I-Preliminary of the Tamil Nadu State and Subordinate Services Rules. Under these circumstances, it was contended that the petitioner cannot now claim for appointment to the post of Sub-Registrar Grade-II from the lapsed Reserve List.



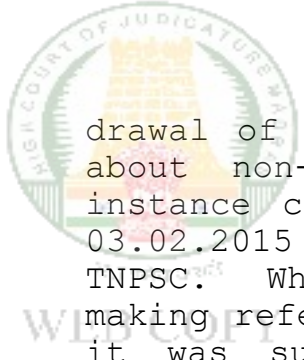


third respondent. Therefore, it is not open to the third respondent to say that the second respondent has failed to send any proposal to allot candidates from the Reserve List for the post of Sub-Registrar, Grade-II. Even for a moment, if we presume that the second respondent has failed to respond to the communication sent by the TNPSC, the third respondent cannot unilaterally remove the names of the selected candidates from the approved list and it is the duty cast upon the TNPSC to ensure whether the second respondent has sent any proposal or not. But, in the present case, letter dated 03.11.2009, sent by the second respondent, carries sufficient evidence from the dispatch register dated 04.11.2009, to the effect that the same has been sent to the third respondent, therefore, it is not open to the third respondent to take a legal stand that there was no proposal from the second respondent. It is a case whether the Appointing Authority-second respondent herein has sent their proposal for deletion of names of the candidates, who were not joined duty, and for allotment of substitutes from the Reserve List drawn for the post of Sub-Registrar Grade II, till 16.11.2009. To this effect, as stated above, they have also sent their proposal on 03.11.2009. In a similar similar circumstances, the Apex Court in *Gujarat State Dy. Xen Association Vs State of Gujarat (1994 (3) JT 559)* has held that a candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join.

14. Under these circumstances, I am of the considered view that the petitioner, who is one among the selected candidates and whose name has been admittedly placed in the Reserve List drawn for the post of Sub-Registrar Grade-II, in the Tamil Nadu Registration Subordinate Service at Sl.No.2 in the category of MBC/DC (G), is entitled to be appointed. "

Applying the above case laws to the cases on hand, it being apparent that the first two contingencies set by the TNPSC in respect of the Reserve List having coming into existence at the relevant point of time, it must be held that both the petitioners have a vested right to claim appointment for the post in question.

13. Coming to the other side of the matter, from the typed set of papers pertaining to W.P.MD.No.10820 of 2015, it is seen that Mr. G. Kaniraj was appointed on 15.02.2013, which means, in all probability, Miss. Vidya should have been issued with the appointment order similarly, that is, during 2013. While so, subsequent to the



drawal of Reserve List during August, 2014, after coming to know about non-joining of the selected candidate/Selvi.Vidya, which instance corresponds to contingency No.1 in the Reserve List, on 03.02.2015 itself, the petitioner made a representation to the TNPSC. While so, in the counter affidavit filed in her case, by making reference only to her last representation, dated 20.05.2015, it was submitted before this Court that the HR&CE Department contacted the TNPSC for removal of the said Vidya's name only on 25.06.2015, which would go to show that the said Authority conveniently slept over the matter and deliberately allowed the Reserve List in respect of the petitioner to lose its validity. Though the TNPSC was addressing the HR & CE Department in an endeavour to exhaust the Reserve List, it is only the callous attitude of the latter which ultimately resulted in passing of the impugned proceedings against the petitioner. Therefore, while there is nothing to blame on the part of the TNPSC, this Court finding fault with the lethargic and callous attitude on the part of the HR & CE, is inclined to grant the prayer sought for by petitioner/M.Pradeepa.

14. Similarly, in the case of Petitioner-K.Marimuthu, the selected candidate by name G.Kaniraj was relived by none else than the HR & CE Department, by proceedings dated 03.01.2014. Apart from that, by representation, dated 06.08.2014, the said Kaniraj undertook that he would not claim any right in respect of the post in question. Thus, when the records made available before this Court would self-speak that the HR&CE was very well aware of exigency No.2 coming into existence, again, deliberately, no step whatsoever was taken by them to co-ordinate with the TNPSC to give effect to the Reserve List in respect of the Number One Candidate in the Reserve List, petitioner-Mr.K.Marimuthu. It is also seen that the petitioner is now about 41 years old and hereafter, he will have no prospects to join government service. Hence, this Court is inclined to grant the prayer of petitioner-K.Marimuthu also.

15. For the foregoing reasons, both the writ petitions stand allowed, directing the TNPSC to forward the names of the petitioners forthwith to the 2<sup>nd</sup> respondent/Commissioner, HR & CE Department, Chennai, who on receipt of the same shall issue suitable appointment orders in their favour, within a period of four weeks thereafter. No costs. Connected Miscellaneous Petitions stand closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar



1.The Secretary to Government, HR & CE Admn. Department, Fort  
St. George, Chennai.

2.The Commissioner, HR & CE Department, Chennai.

3. The Secretary, TNPSC, Chennai.

4.The Commissioner,  
Tamilnadu Hindu Religious and Charitable Endowment,  
Uthamar Gandhi Salai,  
Nungambakkam,  
Chennai 600 034.

+One cc to Mr.G.Thalaimutharasu, Advocate, SR.No.50309

+2css to Mr.K.K.Senthil, Advocate, SR.Nos.49785 and 49782

+2ccs to Mr.T.Antony Arul Raj, Advocate, SR.Nos.50092 and 50312

RL/10C/15P/SS3/15/9/2016

Pre Delivery Common  
Order in WP.MD.Nos.  
10783 & 10820/2015.

02.09.2016.