



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:- 20.06.2016

Coram:-

The Hon'ble Mr. Justice T.Raja

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Writ Petition (MD) Nos.5975 & 5976 of 2016

G.Balaji
N.Prasath

... Petr. in WP.MD.5975/16
... Petr. in WP.MD.5976/16

Vs.

The Secretary / Deputy Secretary,
Tamil Nadu Public Service Commission,
Fracier Bridge Road,
Next to Dental Hospital,
Chennai.

...Respondent in both WPs.

WP.MD.No.5975 of 2016: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records in respect of the impugned letter vide Memorandum No.6207/OTD-B2/2010, dated 16.09.2014, issued by the Deputy Secretary, Tamil Nadu Public Service Commission, Chennai, quash the same and issue a positive direction to the respondent - Secretary, TNPSC, Chennai, to select the petitioner for appointment as Assistant in Interview Posts or in Non-Interview Posts included in combined subordinate services Examination I Register No.01015100 (Group-II Services) under General Turn General against the existing vacancies or in reserved 2 seats on 11.2.2014 by this Hon'ble Court or in the vacancies arising due to Non-Joining duty of selected candidates or selected candidates who joined duty but left thereafter or cancellation of provisional selection of selected candidates for any reasons or drop-out vacancies or with-held vacancies or not filled vacancies under Ex-servicemen General Turn (General) Quota or in any immediate vacancies or in supernumerary post.

WP.MD.No.5976 of 2016: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records in respect of the impugned letter vide Memorandum No.6207/OTD-B2/2010, dated 16.09.2014, issued by the Deputy Secretary, Tamil Nadu Public Service Commission, Chennai, quash the same and issue a positive direction to the respondent - Secretary, TNPSC, Chennai, to select the petitioner for appointment as Assistant in Interview Posts or in Non-Interview Posts included in combined subordinate services Examination I Register No.01016263 (Group-II Services) under General Turn General against the existing vacancies or in reserved 2 seats on 11.2.2014 by this Hon'ble Court or in the vacancies arising due to Non-Joining duty of selected candidates or selected candidates who joined duty but left thereafter or cancellation of provisional selection of selected candidates for any reasons or drop-out vacancies or with-held



vacancies or not filled vacancies under Ex-servicemen General Turn (General) Quota or in any immediate vacancies or in supernumerary post.

For petitioner in

both the WPs : Mr.S.Vijayakumar

For Respondent/TNPSC : Mr.K.K.Senthil

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COMMON ORDER

This is the fourth round of litigation launched by the petitioners herein by name - M/s.G.Balaji (petitioner in WP.MD.No.5975/16) and N.Prasath (petitioner in WP.MD.No.5976/16), who challenge the impugned letters under Memorandum No.6207/OTD-B2/2010, dated 16.09.2014, whereby, it was intimated by the respondent/Tamil Nadu Public Service Commission (hereinafter referred to as the "**TNPSC**") that the petitioners are ineligible for appointment against the vacancy in the post of Personal Clerk in Finance Department under the General-Turn (General) Category for the reason that they do not possess the required educational and technical qualification prescribed for the said post, and it was also advertised to therein that, with regard to 3 unfilled vacancies against GT-Ex-Servicemen Category, sufficient Ex-Servicemen are available in the Ranking List to be summoned for the next phase of counselling.

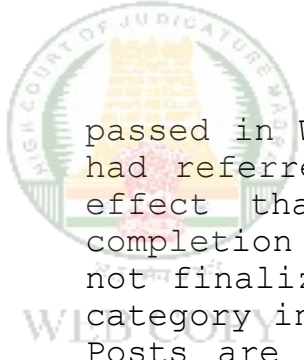
Inasmuch as the subject-matter of challenge and the issues involved in both the writ petitions being similar and identical, they are disposed of by this common order.

2.In an endeavour to highlight the backdrop in which the petitioners have come up before this Court in the fourth round, learned counsel for the petitioners would submit that the TNPSC had issued Advertisement No.258, dated 30.12.2010, and also a supplemental Notification vide Advertisement Nos.265 and 280, inviting Applications for direct recruitment to the posts included in CSSE-1, 2009-11, and announcing 3475 and 3171 vacancies against Oral Test Posts and Non-Oral Test Posts respectively. In response to the same, the petitioners had submitted their Applications and they were admitted to the written examination held on 30.07.2011. In continuation of the selection process, the oral test was conducted from 22.06.2012 to 27.07.2012 and thereafter, three phases of counselling were conducted and candidates were allotted to the Oral Test Posts based on the marks obtained by them both in the Written Examination and the Oral Test. Thereafter, a Rank List was prepared for conducting the First Phase of Counselling in respect of Non-Oral Test Posts based on the marks obtained by the candidates in the written examination. The candidates, who attended the Oral Test but not selected to any of the Oral Test Posts, were also included in that Ranking List. Since counselling for the Oral Test Posts lasted for more than one month, the TNPSC decided to summon the candidates in the ratio of 1:1:5, that is, for every 100 vacancies, 150 candidates were summoned to fill up 3171 vacancies in Non-Oral Test Posts in time. The rank list relating to Non-Oral Test Pots was prepared based on the written examination marks only. In that process, the mark obtained by the last candidate in the written

examination for admission to the First Phase of counselling to Non-Oral Test Post under the GT-General Category was 238.50.

3. By stating that the petitioners viz., M/s.G.Balaji and N.Prasath, had secured 237 and 234 marks respectively, learned counsel would submit that persons who secured less marks than they were selected against Non-Interview posts. He referred to the instances of appointment as Assistant in the Tamil Nadu Ministerial Service given to candidates with the marks 235.50, 231 and 232.50 respectively against GT General Category in the Land Reforms Department/Post Code No.2204, Prison Department/Post Code No.2205 and Police Department/Post Code-2206, in order to make a point that the petitioners-Mrs.G.Balaji and N.Prasath, who secured higher marks viz., 237 and 234 respectively in the written examinations, were denied appointment while candidates referred to above with less marks were selected, thereby, arbitrariness in the action of the TNPSC was very much glaring.

4. In an effort to fortify the case of the petitioners, learned counsel, by referring to the Common Synopsis filed by him, would advert to the contents thereof at Page No.4 with the caption **'illegality and irregularity committed by the TNPSC'**, showing that when the petitioner in W.P.MD.No.5975 of 2016-Mr.G.Balaji had secured 237 marks with the ranking 3234 under the GT-General Category, one Mr.K.Shanmugavijayan, who had secured the same marks viz., 237 but ranked behind the petitioner, that is, at Rank No.3303 under the GT-General Category, was given appointment. Similarly, in the case of the petitioner in W.P.MD.No.5976 of 2016-Mr.N.Prasath, while he holds Rank No.4549 with 234 marks under the GT-General Category, one Mr.P.Nambiraj, who secured the same marks but with lower-ranking at Rank No.4867, was given appointment. In view of the reason that a handful of individuals, who were ranked behind the petitioners, were given appointments, the petitioners had sent the representations, dated 17.12.2012, to the TNPSC, requesting the Commission to consider them for selection and appointment against any left-over vacancy in the GT-Ex-Servicemen Quota. As there was no response, they had filed Writ Petition(MD) Nos.3908 and 3909 of 2013 and this Court, by Orders dated 14.03.2013, had disposed of those writ petitions by directing the TNPSC to consider the aforesaid representation of the petitioners and pass suitable orders within 4 weeks from the date of receipt of the order-copy. Since that was not done, the petitioners once again had visited this Court by filing W.P. MD. Nos.7794 & 7795 of 2013 to direct the TNPSC to appoint them in the existing General Turn Vacancies not filled under the Ex-Servicemen Quota or also in the posts arising due to Non-joining vacancies/left vacancies/withheld vacancies, without carry forward to subsequent selections. The petitioners had also filed one more set of Writ Petitions viz., W.P.MD. Nos.19684 & 19685 of 2013, seeking to direct the TNPSC to appoint them in the existing 12 vacancies not filled under the General Turn against Ex-Servicemen Quota by allotting those vacancies to other than Ex-Servicemen GT candidates. On 11.02.2014, this Court had passed interim orders in WP.MD.Nos.19684 and 19685 of 2013, directing the respondents to keep two posts vacant. Finally, by a Common Order, dated 25.08.2014,



passed in WP.MD.Nos.7794, 7795, 19684 and 19685 of 2013, this Court had referred to the "Position Note" submitted by the TNPSC to the effect that the Reserve List for recruitment was drawn after completion of the entire selection process, however, the process was not finalized yet as one vacancy in the post of JCA under SC (A) W category in the Oral Test Post and 91 vacancies in the Non-Oral Test Posts are still remaining unfilled, and ultimately, by recording the stand of the TNPSC that the vacancies would be filled up in accordance with the merit position and communal reservation, had disposed of the Writ Petition with a direction to the TNPSC to consider the case of the petitioners for appointment to the post of Assistant or any other equivalent post in accordance with their eligibility. Subsequently, when the petitioners had made a representation, dated 29.08.2014, by enclosing the aforesaid Common Order passed by this Court on 25.08.2014, surprisingly, the petitioners received a refusal letter, dated 16.09.2014, which impelled them to initiate contempt proceedings against the respondent/TNPSC by filing Contempt Petition MD. Nos.1338 and 1339 of 2014, wherein, this Court, by Orders dated 07.03.2016, after observing that, if the petitioners are aggrieved by the refusal order, the remedy open for them is to challenge the same before appropriate forum in an independent proceedings, closed the contempt petitions. As the above observation gave liberty to the petitioners to challenge the refusal order, the petitioners are now before this Court in this fourth round.

5.After narrating the above sequence of events, learned counsel for the petitioners ultimately, by contending that even though the petitioners herein stood with the ranking-3234 and 4549 respectively against 237 and 234 marks, in an arbitrary manner, the TNPSC selected the inferior rank-holders M/s.K.Shanmugavijayan (Rank No.3303) and P.Nambiraj (Rank No.4867), and similarly, other individuals with lesser marks were given entry in the counselling and finally, they were allowed to choose the posts to their whims and fancies, thereby, the prospects of these petitioners were usurped, pleaded that the case of the petitioners deserve acceptance by this Court.

6.Controverting the contentions raised by the learned counsel for the petitioners, Mr.K.K.Senthil, learned counsel appearing for the TNPSC, by referring to the detailed common-counter affidavit filed, would submit at the first instance that the present writ petitions filed in the fourth round may have to be dismissed as they lack any good reason or cause for considering the prayer. He would submit that, as per the Ranking List issued by the TNPSC, the marks obtained by the last candidate in the written examination for admission to the First Phase of Counselling under the GT-General Category for Non-Oral Test Posts being 238.50, the same was taken as the cut-off mark. While so, the petitioners herein, viz., M/s.G.Balaji and N.Prasath, had secured only 237 and 234 marks respectively and hence, they could not be summoned for the First Counselling. According to him, in view of the fact that the petitioners, belonging to GT-General Category, failed to secure the cut-off mark, that is - 238.50 marks, all the vacancies reserved for



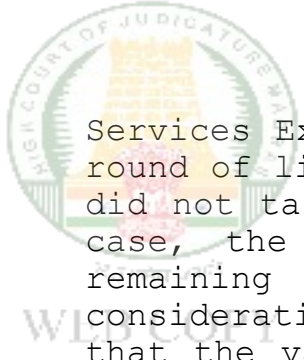
the GT-General Category in Common Degree posts were filled up during the First Phase of Counselling itself. By criticizing that the learned counsel for the petitioners has blown the case out of proportion in showing the instance of candidates, who secured less marks than the petitioners, were given selection orders, Mr.K.K. Senthil would state that all those instances were in respect of candidates who fall under BC/MBC/SC categories or Women Quota, whereas, the petitioners belong to OC/GT-General Category for whom, the cut-off is 238.50 and not less than that. However, unfortunately, this vital aspect having not been properly highlighted during the previous rounds of litigations, the petitioners took advantage of it to file one petition after the other until they reached this fourth round. At any rate, inasmuch as the present claim of the petitioners by citing the instances of others with less marks getting appointment orders cannot be accepted at all owing to the reason that those candidates got weightage from communal reservation, the impugned refusal order passed in respect of the petitioners falling under the GT-General category, for which, there is no weightage available, cannot be found fault with. So submitting, he sought for dismissal of the writ petitions.

7. I have carefully considered the rival submissions advanced on either side.

8. It is the admitted fact that the cut-off mark fixed for admission to the First Phase of Counselling to Non-Oral Test Posts against GT-General Category was 238.50. Again, admittedly, the petitioners did not secure the qualifying/cut-off marks since they had secured only 237 and 234 marks respectively. Therefore, they were not summoned for the First Phase of Counselling in respect of Non-Oral Test Posts. As a result, all the vacancies reserved for GT-General Category in Common Degree posts were filled up during the First Phase of Counselling. Rightly, the TNPSC did not summon the petitioners for the said counselling as the petitioners, who are coming under the GT-General Category, failed to secure the requisite cut-off marks corresponding to their category. The TNPSC, in such course of action, in fact, seemed to have scrupulously followed Rule-4 of the General Rules for T.N. State and Subordinate Services, which reads thus:-

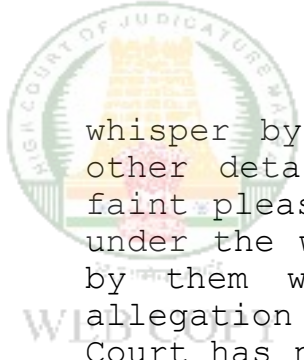
" In respect of a vacancy to be filled by General Turn, the name of the qualified candidates including those belonging to Backward Classes, the Most Backward Classes and Denotified Communities, the Schedules Castes and the Scheduled Tribes in the seniority in a class, category or service shall also be considered."

It is seen from the records that, as per the above Rule, 12 vacancies were left unfilled in the special category of GT-General Ex-Servicemen. After the end of Four Phases of Counselling conducted for Non-Oral Test Posts, sufficient Ex-Servicemen candidates belonging to BC, MBC, Denotified and SC/ST Communities were available in the ranking list. While so, on the premise that 44 vacancies remain un-filled after 6 phases of counselling conducted for Non-Oral Test Posts included in the Combined Subordinate



Services Examination-I, the petitioners took a ground in the second round of litigation viz., W.P. Nos.7794 of 2013, etc. that the TNPSC did not take steps to fill up the remaining vacancies and that, in case, the G.T. Ex-Servicemen Quota is operated to fill up the remaining vacancies, they would come under the zone of consideration. But, the TNPSC had made it very clear before Court that the vacancies are to be filled up strictly in accordance with the merit position and communal reservation. While recording the said submission, this Court had, in its Order dated 25.08.2014, issued a mandamus directing the TNPSC to consider the case of the petitioners for appointment to the post of Assistant or any other equivalent post in accordance with their eligibility, and to complete the exercise within a period of four weeks from the date of receipt of a copy of that order.

9. Subsequent to the said order, the TNPSC, after considering the case of the petitioners, negatived their claim. Now, the petitioners attempt to fortify their case by referring to the instances of persons who, of course, have secured either less marks than them or have been ranked behind them, under a wrong notion that those persons were arbitrarily preferred over them by the TNPSC. To make the issue further clear, it must be pointed out that the parable cited by the petitioners of an individual with 237 marks belonging to GT-General Category and selected as Assistant in the Highways Department in the Tamil Nadu Ministerial Service against Post Code-2217, cannot have any relevance to the petitioners' case since the said individual belongs to "BC - Category". Similarly, another candidate belonging to GT-General Category and selected as Assistant with 235.50 marks falls under PSTM (**Persons Studied in Tamil Medium**) Category. Likewise, one another person with 235.50 marks was selected for Assistant in the Highways Department, based on Women Quota. Similar is the position in respect of M/s.K.Shanmugavijayan and P.Nambiraj, who have been specifically referred to in the Common Synopsis, as it is submitted by the learned counsel for the TNPSC that even though they belong to Forward Communities, they were summoned for counselling only against "**specific degree posts**", for which, the cut-off mark fixed was 232.50 and, since the said two individuals had secured 237 and 234 marks respectively, they were selected and hence, the petitioners cannot have any grievance against them. At any rate, the petitioners, who admittedly do not derive any special consideration from communal reservation, cannot be justified in claiming to treat them on par with the individuals getting weightage from such reservation. It is not even the case of the petitioners, who could not secure the requisite cut-off marks viz., 238.50 fixed for the GT-General Category, that any other candidate belonging to GT-General Category with similar marks as that of the petitioners and not deriving concessions from communal reservation has been given appointment. Also, it is not their case that persons belonging to B.C./MBC/SC-ST/Denotified Communities with cut-off marks less than what was fixed in line with communal reservation, were permitted to participate in the counselling, thereby, those individuals had eaten away the posts meant for GT-General Category. There is not even a



whisper by the petitioners before this Court about the names and other details in that regard so as to at least look into their faint pleas. Inasmuch as the petitioners have filed these petitions under the wrong notion that the selection of candidates referred to by them was done in an arbitrary manner by the TNPSC, which allegation on the face of it, being absolutely misconceived, this Court has no other option but to dismiss the writ petitions.

10. Before parting, this Court deems it necessary to point out a disquieting aspect that repeated filing of writ petitions by the petitioners herein could have been avoided, had the TNPSC filed an exhaustive counter affidavit at the very inception clearly mentioning the details relating to application of communal reservation and the weightage resulted therefrom in favour of persons ranked below the petitioners or secured less marks, to get appointments. Even before this Court, the TNPSC has miserably failed in doing that exercise. It is only during the course of arguments, Mr.K.K.Senthil has brought out the crucial details relating to application of communal reservation in the case of candidates referred to by the petitioners, and also about the particulars relating to different cut-off marks or low cut-off marks set for the candidates falling under BC / MBC / SC-ST / Denotified Communities/Women Quota, because of which, they had preference in appointment over the petitioners and thus, there is no ground to allege any discrimination or arbitrariness against the TNPSC. This Court only expects that, at least in future, the TNPSC would file proper counter affidavits, covering all relevant aspects in each case.

11. In fine, the Writ Petitions are dismissed as devoid of any merit, however, there will be no order as to costs.

Sd/-

Assistant Registrar (W)

/TRUE COPY/

Sub Assistant Registrar

To
The Secretary/Deputy Secretary,
Tamilnadu Public Service Commission,
Fracier Bridge Road,
Next to Dental Hospital, Chennai.
+1cc to Mr.S.Vijayakumar, Advocate, SR NO: 31787
+1cc to Mr.K.K.Senthil, Advocate, SR NO: 31606

JA-PEK-1.7.2016:7P:4C

WP.MD.Nos.5975 and 5976 of 2016
20.06.2016.