

W.M.P.No.13830 of 2016
in
W.P.No.15981 of 2016

M.SUNDAR. J.

1. Writ petitioners are 52 in number. The writ petitioners are now serving as Assistant Jailors, Chief Head Warders and Grade-I Warders in various Sub Jails and Central Prisons in Tamil Nadu.

2.The writ petitioners have taken out the main writ petition with a prayer to quash the notification dated 09.03.2016 being notification No.6/16 issued by the second respondent Tamil Nadu Public Service Commission [hereinafter referred as 'TNPSC' for brevity].

3.The main grievance of the writ petitioners is that if the direct recruitment (pursuant to the above said impugned notification) is done, their chances for promotion will be affected and resultantly their seniority may also be affected.

4. Pending the main writ petition, an interim prayer has been made in the instant W.M.P.No.13830 of 2016. The interim prayer is for staying all further proceedings of TNPSC pursuant to the above said impugned notification dated 09.03.2016 being notification

No.6/2016. The impugned notification is one calling for applications from eligible candidates for direct recruitment for the post of Assistant Jailors in Prison Department and the number of vacancies has been shown as 104.

5. Two points have been raised by the writ petitioners who are also petitioners in the instant stay petition.

6.The first point is that the posts of Assistant Jailors are to be filled up in two ways. One is promotion, to be filled up from the category of Chief Head Warders through approved panel. The other is by way of direct recruitment. It is also not in dispute that 50% is by way of promotion and 50% by way of direct recruitment. Learned counsel for the petitioners would submit that the notification of 104 posts for direct recruitment is in violation of the 50% by promotion rule.

7.The second point raised by the learned counsel for the petitioners is that vacancies that will arise upto 31.05.2017 have been taken into account whereas it should have been for one year from the date of notification.

8. Responding to the two points raised by the learned counsel for the petitioners, learned Additional Advocate General Mr.K.Venkataramani takes me through paragraph 8 of the counter affidavit of the State, wherein a tabular column of number of posts number of vacancies and other details have been given. Paragraph 8 and a portion of paragraph 11 reads as follows. Paragraph 8 reads as follows:

“With regard to the averments made in paragraph 8 of the affidavit, it is submitted that, prior to 1982, there was a ratio of 20% for direct recruitment, 40% for promotion and 40% for transfer of service were followed to fill up the post of Assistant Jailors. However, the Government in G.O.(Ms.) 357, Home (Prison-I) Department, dated 13.02.1982 accepted the recommendation of Tamil Nadu Prison Reforms Commission and restricted the direct recruitment at two levels only viz., Assistant Jailors/Assistant Matron and Grade II Wardens in the Tamil Nadu Jail Subordinate Service Rules, and that the Government also issued orders that 50% of the vacancies in the post of Assistant Jailor should be earmarked for direct recruitment and 50% for promotion. In the above Government Order, Government have also ordered to bring the posts of Assistant Jailor/ Assistant Matron within the purview of the Tamil Nadu Public Service Commission for the purpose of direct recruitment and also classified the posts as Technical. It is submitted that, right from the issuance of the above said Government Order,

50% of vacancies are earmarked to the direct recruitment. In the year 1985, 67 persons and in the year 1995, 3 persons were recruited as Assistant Jailor by direct recruitment and all the directly recruited Assistant Jailors were promoted to the next level. The 3rd respondent followed the ratio correctly and filled up the vacancies arisen in the category of Assistant Jailor from 1996-2015 by drawing temporary panel every year from among the eligible Chief Head Warders. In these panels also, only the services of 50% of candidate alone were regularized on later date and the services of remaining 50% of candidate were considered, if they found eligible, their name would be regularised in the subsequent years. The following are the estimate of vacancy furnished to Tamil Nadu Public Service Commission for the year 1996-1997 to 2006-2007. Government vide letter (Ms) No.780, Home Department, Dated 31.05.2007 have approved the 54 vacancies for direct recruitment for the above period:-

1996-1997	13
1997-1998	2
1998-1999	1
1999-2000	NIL
2000-2001	1
2001-2002	8
2002-2003	2
2003-2004	5
2004-2005	2
2005-2006	6

1996-1997	13
2006-2007	5
2007-2008	9
Total	54

The relevant portion of paragraph 11 reads as follows:

"..... Hence, there was no direct recruitment for the post of Assistant Jailor for a quiet long period. Hence, all the vacancies earmarked for direct recruitment for the post of Assistant Jailor for the year from 1996-2008, 2008-2009, 2009-2010, totally 104 posts, have alone be furnished to the Tamil Nadu Public Service Commission for notification. Accordingly, the Tamil Nadu Public Service Commission in its Notification No.6/2016, have published the above 104 posts in the category of Assistant Jailor for direct recruitment. At present, the sanctioned strength of the post of Assistant Jailor in Class-I, General Section are 240. There are 90 vacancies as on 08.07.2016. But, 43 more vacancies will arise till 31.05.2017 due to the superannuation of the incumbents. Now, only 104 vacancies were notified to the Tamil Nadu Public Services Commission. Hence, by this notification the petitioners will not face any sufferings like loss of seniority."

9. Therefore, it is clear that the 104 posts for which impugned notification has been issued is lesser than 50% of the available vacancies.

10. With regard to taking into account superannuation upto 31.05.2017, learned Additional Advocate General relying on the above extracted portion of paragraph 11 of the counter affidavit would submit that the 104 posts for which the impugned notification has been issued does not include the vacancies beyond 08.07.2016. It is for vacancies as on 08.07.2016. It has merely been stated that 43 more vacancies will arise on 31.05.2017 and there is a need to fill up the vacancies. Therefore, the second point raised by the learned counsel for the petitioners also has been met.

11. Under the above circumstances, it is not possible to accede to the prayer for interim stay of the impugned notification. It would be appropriate to add that it may not be desirable to stay the notification for recruitment.

12. Learned counsel for the petitioners would submit that he has more points to urge if the main writ petition is taken up for hearing.

13. It is also pointed out that pleadings are complete as separate counter affidavits have been filed by respondents 1 and 3

[common counter] and the second respondent namely, TNPSC. Pleadings are complete. There is no impediment in the main writ petition being taken up for final disposal. It is also brought to the notice of the Court by the learned counsel for TNSPC that the recruitment is now at an advanced stage as the written examination concluded on 24.07.2016 and publication of results of the same is in progress. All the counsel namely, the counsel for the writ petitioners, counsel for State and counsel for TNPSC agree to argue the main writ petition at an early date namely, 15.02.2017.

14. During to all that have been stated supra, this stay petition is disposed of with the observation that any recruitment pursuant to the impugned notification being notification no.6/16, dated 09.02.2016 shall be subject to the out come of the main writ petition.

15. W.M.P.No.13830 of 2016 is disposed of.

27.01.2017

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