

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.10.2018

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P. No.20143 of 2013
and
W.M.P. No.10638 of 2017

M.Subramaniyan

... Petitioner

Vs

1.The State of Tamil Nadu
Represented by its Secretary to Government,
Department of Co-operative (Food and Consumer Protection)
Fort St. George,
Chennai - 600 009.

2.The Chairman,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar,
Park Town, Chennai - 600 003.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents herein to forthwith appoint the petitioner (Regn.No.50032055) as Deputy Registrar of Co-operative Societies under the category Backward Class (other than Backward Muslim) pursuant to the notification for appointment for posts included in Group I Services 2008-2009 and 2009-2010.

For Petitioner : Mr.N.G.R.Prasad
for M.rK.N.Selva Bharathi

For Respondents : Ms.T.Girija
Government Advocate (Co-op. Societies)
for R1

: Ms.C.N.G.Niraimathi for R2

O R D E R

The relief sought for in the present writ petition is a direction to direct the respondents herein to forthwith appoint the petitioner (Regn.No.50032055) as Deputy Registrar of Co-operative Societies under the category of Backward Class (Other than Backward Muslims), pursuant to the notification for appointment to the posts included in Group-I Services 2008-2009 and 2009-2010.

2. Pursuant to the recruitment notification issued for appointment to Group-I Services for the year 2008-2009 and 2009-2010 through direct recruitment, the writ petitioner had submitted his application for appointment to the post of Deputy Registrar of Co-operative Societies. The petitioner claims that he is fully qualified for appointment to the post of Deputy Registrar of Co-operative Societies and he belongs to Backward Class (Other than Backward Muslims) and he has applied for the said post of Deputy Registrar of Co-operative Societies, as per the conditions stipulated in the recruitment notification. The petitioner participated in the process of selection and he was successful in the written examination and scored 342.50 marks. The petitioner was called upon to appear for oral interview before the Interview Committee. He appeared before the respondents and performed well and secured 60 marks, and in total, he scored 402.50 marks.

3. The learned Senior Counsel appearing on behalf of the writ petitioner vehemently contended that the writ petitioner is entitled to be appointed to the post of Deputy Registrar of Co-operative Societies. Pursuant to the inclusion of the name of the petitioner in the Reserve List, the select list was published by the Tamil Nadu Public Service Commission on 29.06.2011. Accordingly, the name of the writ petitioner was included in the Reserve List for appointment to the post of Deputy Registrar of Co-operative Societies in Tamil Nadu Co-operative Services.

4. The learned counsel for the petitioner states that one M. Satheesh Kumar, who was selected and appointed to the post of Deputy Registrar of Co-operative Societies (Public Distribution System) joined the said post and thereafter, participated in the next selection process and got selected for appointment to the post of Assistant Commissioner (Commercial Taxes) in Commercial Taxes and Registration Department. Hence, the said M. Satheesh Kumar resigned his post of Deputy Registrar of Co-operative Societies and joined the post of Assistant Commissioner (Commercial Taxes) in Commercial Taxes and Registration Department, vide G.O.(D).No.126, Co-operative (Food and Consumer Protection) Department, dated 11.06.2013.

5. The learned counsel for the writ petitioner is of an opinion that on account of the resignation of M. Satheesh Kumar, one post of Deputy Registrar of Co-operative Societies became vacant and therefore, as per the conditions stipulated in the select list, the writ petitioner ought to have been accommodated in the post of Deputy Registrar of Co-operative Societies. The writ petitioner's name was included first in the Reserve List. Therefore, soon after M. Satheesh Kumar left the service from the post of Deputy Registrar of Co-operative Societies, the writ

petitioner's name ought to have been considered for appointment to the said post, but, the same has not been done by the respondents, which is in violation of their own conditions, stipulated in the select list. There are three conditions stipulated in respect of release of Reserve List and they are as follows :

"The candidates in the Reserve List will be considered for allotment from the respective categories against the vacancies caused due to any of the following reasons :

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

The Reserve List is valid till the drawal of the next select list for this recruitment by the Commission."

6. Referring to the above said conditions, the learned counsel for the petitioner urged this Court by stating that the writ petitioner has got a vested right for appointment to the post of Deputy Registrar of Co-operative Societies, in view of the fact that M. Satheesh Kumar, who joined the post of Deputy Registrar of Co-operative Societies (Public Distribution System) has resigned his post and joined the Commercial Taxes and Registration Department. Thus, the learned counsel insisted that even as per the conditions stipulated, the Reserve List ceases to exist only after the publication of the next select list and not the recruitment notification. In fact, there was no recruitment notification for appointment to the post of Deputy Registrar of Co-operative Societies. When there is no recruitment for the post of Deputy Registrar of Co-operative Societies, the notification issued in respect of other posts cannot be a ground for rejecting the writ petitioner for appointment to the post of Deputy Registrar of Co-operative Societies. Thus, in any angle, the writ petitioner is entitled to be appointed to the post of Deputy Registrar of Co-operative Societies.

7. The learned counsel relies on the judgment of the Hon'ble Division Bench of this Court dated 12.06.2009 in Writ Appeal No.1466 of 2008. Para No.15 of the said judgment is relevant and is extracted hereunder.

"15. In both sets of cases, it is not in dispute that the life of the panel has not come to an end. In the first set of case of Assistant Surgeon (Dental), the panel having prepared in 2007, merely because another advertisement has been published after a few months in absence of any subsequent panel

(select list), it cannot be stated that the life of the earlier panel has come to an end. Similar is the case of the petitioner of W.A.No.1466 of 2008, who claims appointment as Commercial Tax Officer. The subsequent panel having not prepared, the earlier waiting list is in force and for the said reason if the state Government has made a requisition to forward the name of the petitioner, it was not open to the TNPSC to refuse to recommend such name.

We find no merit in any of the appeals, therefore, interference with the impugned judgment(s) are uncalled for. All the writ appeals, accordingly, are dismissed. But in the facts and circumstances there shall be no order as to costs."

8.Relying on the above judgment of the Hon'ble Division Bench, the learned counsel has stated that, merely because another advertisement has been published after few months in respect of some other posts, the same cannot be a bar for release of Reserve List for the post of Deputy Registrar of Co-operative Societies. Thus, the case of the writ petitioner deserves to be considered.

9.The learned counsel appearing on behalf of the Tamil Nadu Public Service Commission, raised a preliminary objection by stating that the Secretary of the Commission, who can sue and can be sued under the provisions of the Tamil Nadu Public Service Commission Rules of Procedure, has not been impleaded as a party and on that ground, the writ petition is liable to be rejected.

10.This Court is unable to accept such a contention, in view of fact that impleading a wrong person, knowingly or unknowingly by the litigants, should not have an effect on deciding the merits of the case. It is always left open to the Court to correct all such mistakes and grant the relief, if the merits are established by the litigants concerned. This Court is of an undoubted opinion that on such hyper-technical grounds, the writ petition cannot be rejected. All the writ petitions are to be adjudicated on merits and based on the legal grounds raised by the parties. Contrarily, if the writ petitions are decided merely on the wrong impleadment of the parties, then this Court is of an apprehension that the very spirit of the constitutional mandate will be defeated. Thus, this Court is not inclined to consider the said preliminary objection, raised by the 2nd respondent. However, it is made clear that the Secretary, Tamil Nadu Public Service Commission is a person to sue and to be sued, under the provisions of the statute.

11.The learned counsel further raised the ground that the writ petitioner is not entitled to get appointment, on the ground that his name was included only in the Reserve List in Sl.No.1, and the writ petitioner was not selected for appointment to the post of Deputy Registrar of Co-operative Societies. However, M.Satheesh Kumar was selected and appointed to the post of Deputy Registrar of Co-operative Societies had joined the said post and he was serving till he was appointed to the post of Assistant Commissioner in Commercial Taxes and Registration Department.

12.It is brought to the notice of this Court that the next selection for the posts included in Group-I Services was notified by the 2nd respondent on 28.01.2011 and the process of selection was concluded and the select list was published on 14.02.2013.

13.Relying on the said factum, the learned counsel appearing for the 2nd respondent made a submission that, till the select list was drawn on 14.02.2013, the said M.Satheesh Kumar was serving as Deputy Registrar of Co-operative Societies. After his selection and appointment to the post of Assistant Commissioner, Commercial Taxes and Registration Department, he joined the said post, pursuant to the order issued by the Government in G.O.(D).No.126, Co-operative (Food and Consumer Protection) Department, dated 11.06.2013. The said M.Satheesh Kumar was relieved from his service from the post of Deputy Registrar of Co-operative Societies (Public Distribution System, Villupuram), pursuant to the Government Order cited supra, dated 11.06.2013. However, the select list in respect of the next selection for Group-I Services was drawn on 14.02.2013, which is prior to the relieving of the said M.Satheesh Kumar from the post of Deputy Registrar of Co-operative Societies.

14.The learned counsel for the writ petitioner disputed the said contention, on the ground that the post of Deputy Registrar of Co-operative Societies was not notified during the next selection process and therefore, it is to be construed that no subsequent recruitment notification was issued in the respect of the said post. Thus, the very contention raised by the 2nd respondent deserves no merit consideration.

15.The learned counsel for the respondents defended their point by stating that it is a recruitment, which is for various posts included in Group-I Services and therefore, the conditions stipulated are in reliance with the notification for recruitment to Group-I Services and not in respect of a particular post alone.

16.This Court is of an opinion that the writ petitioner was successful in the process of selection. He was selected and his

name was kept in the Reserve List in Sl.No.1. Undoubtedly, the next recruitment notification was issued on 28.01.2011 for appointment to the posts included in Group-I Services. It is further admitted that during the next selection, the post of Deputy Registrar of Co-operative Societies was not notified at all. However, the fact remains that the Reserve List has not been released at all. The Reserve List was not acted upon by the respondents for the purpose of considering the names of the persons included in the Reserve List.

17.The question arises whether the inclusion of a name of a candidate in the select list will confer any right on the candidate to seek appointment by filing a writ petition.

18.Appointment can never be a matter of right. Even the selection will not confer any right on the candidate to seek appointment. Only in the event of establishing that any illegality, malpractice or corrupt practices have been adopted by the recruiting agents, the Courts can interfere. The decision as to fill up a post or not to fill up a post, is an administrative prerogative of the competent authorities in its arena.

19.The Hon'ble Supreme Court in the case in Gurmeet Pal Singh vs State Of Punjab & another, reported in (2018) 7 SCC 260 has categorically dealt with the rights of the selected candidates with reference to the recruitment process in judiciary. Para No.17 of the said judgment is extracted hereunder :

"17. We agree with the contention advanced by learned counsel appearing for the High Court, more so when merely because the name of a candidate finds a place in the select merit list does not given an indefeasible right to appointment as well and it is always open to not even fill up a vacancy."

The said findings were made based on the judgment of the Hon'ble Supreme Court in the case of Kulwinder Pal Singh and another v. State of Punjab and others, reported in (2016) 6 SCC 532. In the said judgment, Her Lordship Tmt.R.Banumathi, J., has held as follows :

"10. It is fairly well-settled that merely because the name of a candidate finds place in the select list, it would not give him indefeasible right to get an appointment as well. The name of a candidate may appear in the merit list but he has no indefeasible right to an appointment (vide Food Corporation of India and Ors. v. Bhanu Lodh and Ors., (2005) 3 SCC 618; All India SC & ST Employees' Association & Anr. v. A. Arthur Jeen & Ors. (2001) 6 SCC 380 and Union of Public Service Commission v. Gaurav Dwivedi and Ors. (1999) 5 SCC 180.

11. This Court again in the case of State of Orissa & Anr. v. Rajkishore Nanda and Ors. (2010) 6 SCC 777, held as under:

"14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

.....

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required."

12. In Manoj Manu and Anr. v. Union of India & Ors. 2013 (10) SCALE 204: (2013) 12 SCC 171, it was held that merely because the name of a candidate finds place in the select list, it would not give the candidate an indefeasible right to get an appointment as well. It is always open to the government not to fill up the vacancies, however such decision should not be arbitrary or unreasonable. Once the decision is found to be based on some valid reason, the court would not issue any mandamus to government to fill up the vacancies. As noticed earlier, because twenty two other candidates were declared successful by the Supreme Court pertaining to the selection of the years 1998, 1999, 2000 and 2001 as Civil Judges (Junior Division), they were to be accommodated, as rightly resolved by the Administrative Committee in the meeting dated 06.07.2011. The three resultant vacancies of the year 2007-2008 stood consumed with the joining of the said seventeen candidates and the same could not be filled up from the select list of that year. The decision of the Administrative Committee observing that the three resultant vacancies stood consumed is based on factual situation arising there and cannot be said to be arbitrary."

20. Considering the legal principles settled in the above cases by the Apex Court of India, this Court is of an opinion that a direction cannot be issued to appoint a person, in the absence of establishing that there is an illegality committed by

the selection authorities. In the present writ petition on hand, undoubtedly, the writ petitioner was selected and included in the Reserve List. However, the next recruitment notification for Group-I Services was issued on 28.01.2011 and the process of selection was concluded and the select list was published on 14.02.2013. It is not a post-wise/category-wise appointment. Recruitment notifications are issued by the Public Service Commissions group-wise. For instance, Group-I Services includes a number of posts in various departments, so also the Group-II Services, Group-III Services and Group-IV Services, which include a number of posts in a number of departments. Therefore, the recruitment process has been conducted group-wise and not category-wise. Thus, the non releasing of the Reserve List cannot be found fault with.

21.It is pertinent to point out that the next recruitment notification for Group-I Services was issued in the year 2011 and the select list was published on 14.02.2013 and in the present case, M.Satheesh Kumar was relieved from the post of Deputy Registrar of Co-operative Societies, pursuant to the order passed by the Government in G.O.(D).No.126, Co-operative (Food and Consumer Protection) Department, dated 11.06.2013. Thus, as on date of publication of select list, there was no available vacancy, enabling the respondents to release the Reserve List and this Court finds no infirmity in respect of the action taken by the respondents.

22.This apart, the Reserve List has already lapsed and now, after a lapse of five years, this Court cannot issue any direction to appoint the writ petitioner to the post of Deputy Registrar of Co-operative Societies and it is for the writ petitioner to participate in the forthcoming selection, if any, to be notified by the respondent Commission.

In the result, this writ petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

tta/mkn

To

1.The Secretary to Government,
State of Tamil Nadu
Department of Co-operative (Food and Consumer Protection)
Fort St. George,
Chennai - 600 009.

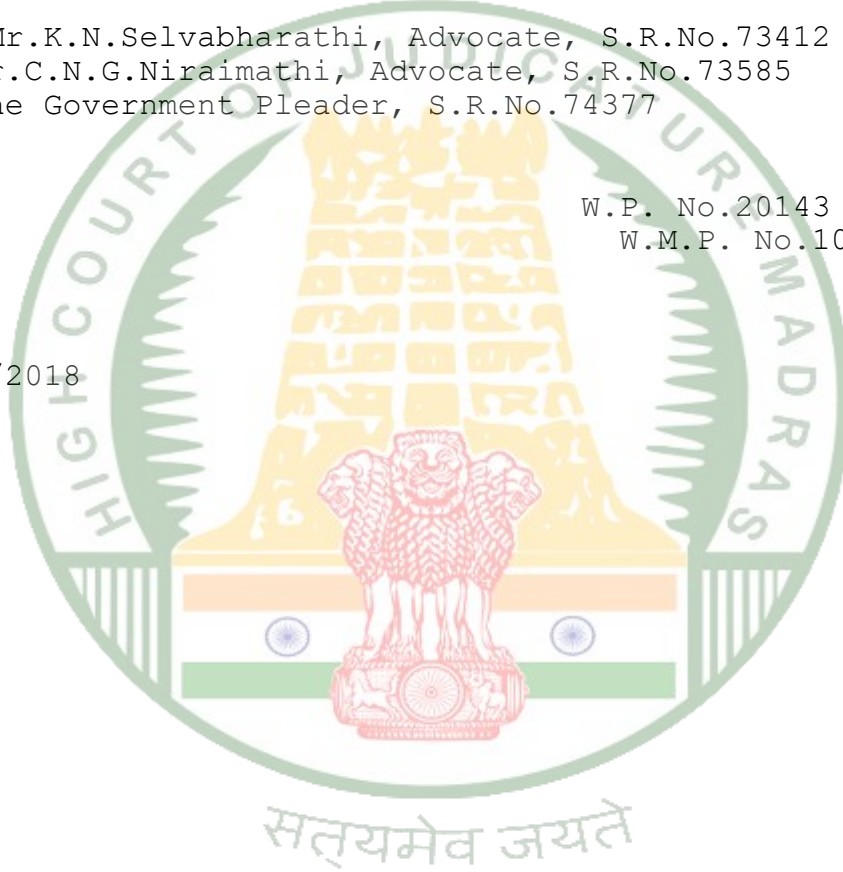
2.The Chairman,
The Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai - 600 003.

+3ccs to Mr.K.N.Selvabharathi, Advocate, S.R.No.73412
+1cc to Mr.C.N.G.Niraimathi, Advocate, S.R.No.73585
+1cc to the Government Pleader, S.R.No.74377

W.P. No.20143 of 2013 and
W.M.P. No.10638 of 2017

RGN(CO)

rrs 20/11/2018



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