

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 22.10.2018

Orders Pronounced on : 02.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P.No.3547 of 2018
and
W.M.P.No.25945 of 2018

S.Anbarasan .. Petitioner

Vs.

1. State of Tamil Nadu,
Represented by the Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-600 009.

(The first respondent is deleted from the
cause title, as per order passed today (02.11.2018)
in W.M.P.No.25945 of 2018 in W.P.No.3547 of 2018)

2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002.
3. The Chairman,
State Level Scrutiny Committee and
the Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009. .. Respondents

Writ Petition filed under Article 226 of the Constitution of
India, praying for issuance of a Writ of Certiorarified
Mandamus to call for the records in the order bearing Memorandum
No.706/OTD-A2/2008, dated 04.12.2017 passed by the respondent
No.2-TNPSC and quash the same and direct the respondent No.1 to
appoint the petitioner as Assistant Engineer in the Rural
Development and Panchayat Raj Department immediately.

For petitioner : Mr.M.Radhakrishnan

For respondents :Mr.K.Rajendra Prasad, Addl.G.P. for RR-1 and 3
Mr.M.Loganathan for R-2

ORDER

R.SUBBIAH, J

The present Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records in the order bearing Memorandum No.706/OTD-A2/2008, dated 04.12.2017 passed by the second respondent-TNPSC and quash the same and direct the first respondent to appoint the petitioner as Assistant Engineer in the Rural Development and Panchayat Raj Department immediately.

2. It is the case of the petitioner that he obtained a Degree of Bachelor of Engineering in 2007 and a Post-Graduate Degree of M.Plan in 2010 from Anna University, Chennai. He belongs to Kurumans Scheduled Tribe. As a Scheduled Tribe candidate, the petitioner appeared for the Combined Engineering Services Examination, 2008, which was conducted by the second respondent-TNPSC for direct recruitment to the posts included in the said Engineering services. The petitioner came out successful both in the written examination and interview. Since the Scheduled Tribe Community Certificate was under verification, the petitioner's results were with-held by the second respondent-TNPSC. The third respondent-State Level Scrutiny Committee, by an order dated 07.08.2014, confirmed the petitioner's Community Certificate and declared that the petitioner belongs to Kurumans Scheduled Tribe Community.

3. It is further stated by the petitioner that verification of the Community Certificate was pending with the third respondent for more than eight years. After the said confirmation of the petitioner's Community Certificate by the third respondent-Committee, the petitioner made a representation dated 17.11.2017 to the second respondent-TNPSC requesting that the results of the said examination be declared. The second respondent-TNPSC, by the impugned communication dated 04.12.2017, informed the petitioner that he was placed in the reserve list for the post of Assistant Engineer in the Rural Development and Panchayat Raj Department under Scheduled Tribe (General) Category. and consequent to the publication of the selection list for the subsequent recruitments, the reserve list for the Combined Engineering Service Examination, 2008 had already lost its validity.

4. The petitioner further alleges that it is incumbent upon the first respondent to appoint the petitioner to the post of Assistant Engineer provisionally pending verification of his Community Certificate by the third respondent-Committee. It is also incumbent upon the second respondent-TNPSC to declare the petitioner's results without awaiting for the outcome of verification of the petitioner's Community Certificate by the third respondent-Committee. Only when the petitioner made the said representation, dated 17.11.2017 after confirmation of the Community Certificate by the third respondent-Committee, the

second respondent-TNPSC informed the petitioner that his name had already been placed in the reserve list for the post of Assistant Engineer, but he could not be appointed for the reason that reserve list had lost its validity after the publication of the select list for the subsequent recruitments. Being a member of Scheduled Tribe, the petitioner had been deprived of valuable opportunity of public employment in the first respondent's office on account of the negligence on the part of the respondents in discharging their public duty. Hence, the petitioner has filed the present Writ Petition for the relief stated supra.

5. When the Writ Petition is taken up for consideration, learned counsel for the petitioner made detailed submissions by averting to the averments made in the affidavit, mainly contending that the petitioner was provisionally selected in the Combined Engineering Services Examination, 2008 conducted by the second respondent. But however, the results were with-held only for verification of his Scheduled Tribe Community Certificate. The said verification was pending with the third respondent-State Level Scrutiny Committee for more than eight years and the petitioner's Community Certificate was confirmed by the third respondent-Committee on 07.08.2014. Only after the petitioner gave the representation on 17.11.2017, the petitioner's results were declared and he was informed that he is placed in the reserve list. The delay of eight years is not due to the fault on the part of the petitioner, but due to the fault on the part of the respondents. Hence, learned counsel for the petitioner prayed for allowing the Writ Petition.

6. Countering the above submissions made by the learned counsel for the petitioner, by filing counter affidavit, learned counsel for the second respondent-TNPSC submitted that the TNPSC, in its Notification dated 31.01.2018, invited applications from eligible candidates for appointment by direct recruitment to the posts included in the Combined Engineering Services Examination, 2008. The written examination was held on 11.05.2008 and the oral test was conducted from 31.03.2009 to 21.04.2009. The selection for the said recruitment was finalised during May 2009. The petitioner is one among the candidates who had applied to the TNPSC for the said recruitment. He secured a total of 144.00 marks (123.00 marks in the written examination and 21.00 marks in the oral test).

7. Learned counsel for the second respondent-TNPSC further submitted that based on the marks obtained by the petitioner in the written examination and oral test, and based on the rule of reservation for appointment and number of vacancies, the petitioner has not reached the zone of selection, however, he had been placed in the reserve list for the post of Assistant Engineer in the Rural Development and Panchayat Raj Department under Scheduled Tribe (General) Category. Simultaneously, a reference was made to the State Level Scrutiny Committee for

verification of the genuineness of the Scheduled Tribe Community claim of the petitioner as per procedures. Further, in the said recruitment, a total of two vacancies were reserved for Scheduled Tribe (General) category for the post of Assistant Engineer in the Rural Development and Panchayat Raj Department. Against these vacancies, the following two candidates had been selected, details of which are as under:

Sl.No. in the selecti on list	Regr. No.	Name of candidate	Written exam marks	Oral test marks	Total Marks
50	02501103	Saravanan.S	135	18.00	153.00
150	00107103	Subramanian.A. (DoB 15.06.1977)	123	21.00	144.00

The petitioner who secured 144 marks (DoB: 05.01.1984) was placed in the reserve list.

8. In the above context, learned counsel for the second respondent-TNPSC invited the attention of this Court to Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, and reserve list can be operated only for the following reasons:

- "(i) a candidate selected for appointment does not join duty in the post for which he is appointed.
- (ii) his provisional selection for the post is cancelled for any reason.
- (iii) candidates have joined duty, but left thereafter while the reserve list is in force."

Learned counsel for the second respondent-TNPSC further submitted that since none of the above stated reasons in Section 27(f) had occurred, the question of operating the reserve list and selecting the writ petitioner did not arise.

9. Learned counsel for the second respondent-TNPSC further contended that as per Section 3(u) of the said Act, the reserve list shall be in force until the regular list is drawn up subsequently. Section 3(u) reads as follows:

"Reserve list" means a list which is prepared so as to contain not less than twenty five per cent of the candidates of each reservation group including General Turn in the regular list and shall be in force until the regular list is drawn up subsequently."

10. Learned counsel for the second respondent-TNPSC further stated that the subsequent regular lists for the post of Assistant Engineer in Rural Development and Panchayat Raj Department had been published as detailed below:

Sl.No.	Recruitment Yera	Date of finalisation of selection/counselling
1	Combined Engineering Services Examination, 2010	05.09.2011
2	Combined Engineering Services Examination, 2009-2013	11.08.2014

Hence, the learned counsel for the second respondent-TNPSC prayed for dismissal of the Writ Petition.

11. Keeping in mind the submissions made by the learned counsel appearing for the parties, we have given our careful consideration to the same and also perused the records.

12. It is the main grievance of the petitioner that though his name was placed in the reserve list, for want of Community Certificate, his results were with-held, and on his representation, he was informed that he could not be appointed on the ground that the reserve list had lost its validity after publication of the select list for the subsequent recruitments. The State Level Scrutiny Committee has also confirmed the petitioner's Community Certificate on 07.08.2014. The delay of eight years is not due to the fault on the part of the petitioner, and therefore, learned counsel for the petitioner submitted that the petitioner being a member of Scheduled Tribe, had been deprived of valuable opportunity of public employment in the first respondent-State.

13. As contended by learned counsel for second respondent-TNPSC, we find that two candidates as stated above, had been selected. It is seen that petitioner had earlier sent representation dated 17.11.2017 to take necessary action, as his Community Certificate had been confirmed by State Level Scrutiny Committee. The abovesaid two candidates had obtained total marks of 153 and 144 respectively. Though petitioner also obtained 144 marks on par with one of the abovesaid candidates, namely A.Subramanian, since said A.Subramanian is elder to petitioner, petitioner's name was not considered. Therefore, the post has already been filled up. Moreover, reserve list can be operated for the abovesaid reasons as extracted above as per Section 27(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016. But none of the reasons stated therein had occurred, and therefore, question of operating the reserve list for the petitioner does not arise. The regular lists for the post of Assistant Engineer in Rural Development and Panchayat Raj Department had been published based on the

Combined Engineering Services Examination, 2010 and 2009-2013 and they were finalised on 05.09.2011 and 11.08.2014 respectively.

14. Therefore, for the reasons stated above, at this length of time, we do not find any merit in this Writ Petition, which is accordingly dismissed. No costs.

15. W.M.P.No.25945 of 2018 had been filed by the first respondent to delete the name of the first respondent from the cause title on the ground of misjoinder of parties. Learned Additional Government Pleader appearing for the first respondent also stated that the first respondent is not a necessary party. Though the petitioner has prayed for a direction to the first respondent to appoint him as Assistant Engineer in the Rural Development and Panchayat Raj Department, the said prayer is not maintainable as against the first respondent. Further, we find that the petitioner has not challenged any order passed by the first respondent. Hence, the first respondent is not a necessary party to adjudicate on the issue. Accordingly, the name of the first respondent is deleted from the array of parties in the cause title of the Writ Petition. W.M.P.No.25945 of 2018 is ordered accordingly.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. State of Tamil Nadu,
Represented by the Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-600 009.
2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002.
3. The Chairman,
State Level Scrutiny Committee and
the Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

+lcc to Mr.M.Loganathan, Advocate SR.No.75982

W.P.No.3547 of 2018

SR(CO)
GMY(18/12/2018)