

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2018

DELIVERED ON : 28.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.25778 of 2015 and 5629 of 2018
and
M.P.No.2 of 2015 WMP.Nos.2013,2014, 6962 of 2018

WP.No.25778/15

J.Arun Prasad ... Petitioner

-Vs-

1. The Tamilnadu Public Service Commission
rep by its Secretary Frazer Bridge, V.O.C.Nagar
Park Town, Chennai-600 003

2.The Controller of examinations
Tamilnadu Public Service Commission
Frazer Bridge, V.O.C.Nagar
Park Town, Chennai-600 003

3.The Registrar General
High Court of Judicature at Madras
Chennai-600 104

4.The State of Tamilnadu
rep by its Secretary to Government
Home Department (courts)
Fort St.George, Chennai-600 009

... Respondents

W.P.No.5629 of 2018

R.Vijayalakshmi ... Petitioner
vs

1. The State of Tamilnadu
rep. by its Principal Secretary to Government
Home (Courts-I) Department
Fort St.George
Chennai-600 009

2.Tamilnadu Public Service Commission
rep. by its Secretary,
Frazer Bridge Road, V.O.C.Nagar
Park Town, Chennai-600 003

3.The Registrar General
High Court of Judicature at Madras
High Court buildings
Chennai

... Respondents

PRAYER in W.P.No.25778 of 2015: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned provisional selection list dated 02.06.2015 published by the 1st respondent and to quash the same and consequently direct the respondents 1 and 2 to republish the list of selected candidates in the Direct Recruitment of Civil Judge Post (Post Code 2089) (2013-2014) by redrawing the same in strict conformity with the horizontal reservation for women and thereafter to recast the selection list and to appoint the petitioner.

PRAYER in W.P.No.5629 of 2018: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to appoint the petitioner in the post of Civil Judge in the Tamil Nadu State Judicial Services in the vacancy that has arisen due to the resignation of K.Sujatha in the category of reserved category under the Backward classes category (other than Backward Class Muslims) (Women).

For Petitioner in
W.P.No.25778 of 2015 : Dr.Francis Xavier Arulraj,
Senior Counsel
for
Mr.L.Chandrakumar

For Respondent in
W.P.No.25778 of 2015 : Ms.C.N.G.Niramathi,
Standing Counsel for R1 and 2
Mr.M.Baskar for R3

Mr.M.Sricharan Rangarajan
Spl.GP for R4

For Petitioner in W.P.No.5629 of 2018 :Mr.T.Sai Krishnan
For Respondent in

W.P.No.5629 of 2018: Mr.M.Sricharan Rangarajan
Spl.GP for R1

Ms.C.N.G.Niramathi, Standing
Counsel for R2

Mr.M.Santhana Raman for R3

COMMON ORDER

(Order of the Court was made by C.T.SELVAM,J)

Pursuant to notification issued by 1st respondent Tamil Nadu Public Service Commission (TNPSC) calling for applications for direct recruitment to the post of Civil judge in the Tamil Nadu State Judicial Service, petitioner in W.P.No.25778 of 2015 had applied and been assigned Registration No.010006035. He obtained total of 229 marks in the written examination and 31.50 marks in the oral exam, in all 260.50 marks. Petitioner submitted that category and number of vacancies published by 2nd respondent is as follows:

CATEGORY	NO. of Vacancies
GENERAL TURN	
GENERAL	27
WOMEN	10
GENERAL PARTIALLY BLIND (C/F)	2
WOMEN PARTIALLY BLIND	1
WOMEN PSTM	4
TOTAL	51

CATEGORY	NO. of Vacancies
BACKWARD CLASS (OTHER THAN BACK WARD CLASS MUSLIMS)	
GENERAL	23
WOMEN	10
GENERAL PARTIALLY DEAF	1
GENERAL PSTM	5
WOMEN PSTM	2
TOTAL	41

2. He secured rank No.125 out of 313 candidates. Provisional selection list was issued by the 2nd respondent Controller of examinations TNPSC and petitioner was wait listed as the second candidate in Backward Class (other than Backward Class Muslim).

3. He contended that those who had scored less marks than him had been selected and after taking into account the with holding of result of one candidate who had applied under the General Turn Category (General Partially Blind (C/F) category, carrying forward of one post reserved for Partially Blind Woman candidate as no such candidate was available, the filling up of one General Persons Studied in Tamil Medium

(PSTM) and 4 women PSTM posts through candidates whose medium of study was English, owing to non-availability of candidates whose medium of study was Tamil, there remained 42 posts out of total 51 open category posts which ought to have been selected from the first 42 rank holders in the merit list. He informed that of the first 42 rank holders 13 were women and the 30% horizontal reservation made for woman could have been achieved by selecting the women candidate who secured the highest mark after the 42nd rank holder and replacing him by her. He further contended that of the 42 vacancies reserved for Backward Class (other than Backward Muslims) there was no eligible candidates under General Partially blind category and the said vacancy had been carried forward. Similarly, as within such category no eligible PSTM candidates were available, five posts so reserved and two reserved for women of such class had been filled by candidates whose medium of study was English. He contended that the remaining 40 candidates, whose medium of study was English ward Class Muslims category ought to have been selected on the basis of marks obtained by them and as 21 candidates so qualified were women the 30% reservation for women quota would have been achieved and there was no need for separate selection for women by excluding male candidates who have scored more marks. He stated that by misconstruing and wrongly applying horizontal reservation for women he and other male candidates who had secured more marks than women stood wrongly deprived.

4. The Hon'ble Supreme Court in *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission*, (2007) 8 SCC 785, has explained how vertical reservations take effect and the interplay between vertical and horizontal reservation as also the manner in which over all horizontal reservations and horizontal compartmentalised reservations affect the vertical reservation list. Paragraph 6, 7 and 9 read as follows:

"6. Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In *Indra Sawhney vs. Union of India* [1992 Supp.(3) SCC 217], the principle of horizontal reservation was explained thus (Pr.812) :

"[A]ll reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes [(under Article 16(4))] may be called vertical reservations whereas

reservations in favour of physically handicapped (under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same."

7. A special provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in Anil Kumar Gupta vs. State of U.P. [1995 (5) SCC 173] thus :

" The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an overall horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalized

horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.)"

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group

of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example :

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.)

5. Rule 21 of Tamil Nadu State and Subordinate Service Rules providing for reservation of 30% Posts for Women was challenged in W.PNo.18399 of 2008. Hon'ble Division Bench of this Court in judgment reported in 2009 (4) LW 140 held the rule Constitutional and in consonance with Article 15(3) and not in anyway violative of Article 16(2) of the Constitution of India.

6. Though initially learned Senior Counsel Dr.Francis Xavier Arulraj for petitioner in W.PNo.25778 of 2015 made submissions in keeping with the contentions of petitioner narrated herein above, he narrowed down his submissions to contending that in five instances names of the woman candidates selected had not been informed and though their Roll numbers had been informed, the marks obtained by them had not. Learned counsel for first respondent in a most lucid manner, went about explaining the manner in which selection of candidates had been effected in keeping with rules extant. Learned counsel explained that rank holders 1 to 27 had been selected against the General vacancies. As 6 candidates held requisite proof of their medium of study being Tamil, only they could be selected against the 7 (General Turn (General) PSTM vacancies. Section.6 of the Tamilnadu Appointment on Preferential Basis in the Services under the State of Persons Studied in Tamil Medium Act, 2010 read as follows:

"6. Filling up of vacancies in preferential allotment. Notwithstanding anything contained in Section 3, where adequate number of qualified and suitable persons studied in Tamil Medium are not available for appointment in the preferential vacancies, such unfilled vacancies shall be filled up with persons studied in other mediums within the respective category."

7. In keeping with the said section the 7th PSTM vacancy was converted into a Non-PSTM one and the 28th rank holder was selected against GT-G-Substitute/Non PSTM vacancy. Rank No. 29 was secured by a MBC candidate, Rank No.30 by a SC Woman, Rank Nos.31 to 33 by BC woman candidates and Rank 34, a BC General candidate. Thus Rank holders 29 to 34 had been selected, Rank nos. 30 to 33 having been selected against the GT women vacancies. Learned counsel explained that by following the said process one Suresh.N had been selected as the first Backward Class (other than Backward Class Muslim) candidate against the 23 General BC vacancies. Towards providing a clearer picture both to the Court as also the petitioner, this Court has required learned counsel to submit details in proforma. Learned counsel has done so and the same informs thus:

LIST OF BC(OBCM) CANDIDATES SELECTED FOR THE POST OF CIVIL JUDGE IN THE TAMIL NADU STATE JUDICIAL SERVICE FOR THE YEAR 2013-2014

S l. No	REG.No	NAME	CAST E	WRITTE N EXAM MARKS	ORAL TEST MARK S	TOTA L MARK S	SELECTIO N (PICKING) CATEGORY
1	170001 202	VIPICEE.S	BC (OBC M)	285.50	38.2 5	323. 75	GT-G (1/27)
2	020001 153	PRINCE SAMUVEL RAJ.S	BC (OBC M)	278.00	38.2 5	316. 25	GT-G (2/27)
3	020001 016	KALAIYARASI REENA.C	BC (OBC M)	266.00	45.0 0	311. 00	GT-G (3/27)
4	100005 032	PANDY.R	BC (OBC M)	262.00	45.0 0	307. 00	GT-G (4/27)
5	020004 087	VADIVEL.S	BC (OBC M)	274.00	31.5 0	305. 50	GT-G (5/27)
6	010003 143	VISWANATH.N	BC (OBC M)	270.00	31.5 0	301. 50	GT-G (7/27)
7	250003 159	SUBRAMANI.S	BC (OBC M)	253.00	45.0 0	298. 00	GT-G (10/27)
8	020004 075	SANTHANAKUM AR.S	BC (OBC M)	252.00	45.0 0	297. 00	GT-G (12/27)
9	250002 160	ANITHACHRIS TY.J	BC (OBC M)	252.00	45.0 0	297. 00	GT-G (14/27)
10	250001 072	VENGADALAKS HMI.S	BC (OBC M)	271.00	24.7 5	295. 75	GT-G (15/27)
11	250001 257	PRASAD.S	BC (OBC M)	250.00	45.0 0	295. 00	GT-G (16/27)
12	170001 183	MANIVASAGAN .R	BC (OBC M)	249.00	45.0 0	294. 00	GT-G (18/27)
13	020002 273	SANTHOSH.V L	BC (OBC M)	248.00	45.0 0	293. 00	GT-G (21/27)
14	170002 204	RAJESH KUMAR KS	BC (OBC M)	254.50	38.2 5	292. 75	GT-G (22/27)

S l. No	REG.No	NAME	CAST E	WRITTE N EXAM MARKS	ORAL TEST MARK S	TOTA L MARK S	SELECTIO N (PICKING) CATEGORY
15	100001 025	MURALITHARA N.V	BC (OBC M)	251.50	38.2 5	289. 75	GT-G (25/27)
16	010004 279	SELVARAJ.E	BC (OBC M)	244.00	45.0 0	289. 00	GT-G (27/27)
17	100005 228	YUVARAJ.K	BC (OBC M)	244.00	45.0 0	289. 00	GT-G (PSTM) (7/7)
18	020001 296	TAMILARASI. V A	BC (OBC M)	255.00	31.5 0	286. 50	GT-W (2/10)
19	010006 122	PADMAVATHI. G	BC (OBC M)	248.00	38.2 5	286. 25	GT-W (3/10)
20	100001 262	KALAI NILA.P	BC (OBC M)	247.00	38.2 5	285. 25	GT-W (4/10)
21	010001 255	SURESH.N	BC (OBC M)	240.00	45.0 0	285. 00	BC (OBCM) -G (1/23)
22	170001 282	JAYANTHI.M	BC (OBC M)	253.00	31.5 0	284. 50	GT-W (5/10)
23	190002 037	RAGUPATHIRA JA.L	BC (OBC M)	239.00	45.0 0	284. 00	BC (OBCM) -G (2/23)
24	010002 308	SUJATHA.K	BC (OBC M)	238.50	45.0 0	283. 50	GT-W (6/10)
25	020001 207	KARTHIKEYAN .R	BC (OBC M)	245.00	38.2 5	283. 25	BC (OBCM) -G (3/23)
26	100006 002	RAMGANESH.D	BC (OBC M)	238.00	45.0 0	283. 00	BC (OBCM) -G (4/23)
27	250002 144	BHARATHI.T	BC (OBC M)	250.00	31.5 0	281. 50	GT-W (7/10)
28	270001 338	SATHEESHKUM AR.P T	BC (OBC M)	236.00	45.0 0	281. 00	BC (OBCM) -G (5/23)

S l. No	REG.No	NAME	CAST E	WRITTE N EXAM MARKS	ORAL TEST MARK S	TOTA L MARK S	SELECTIO N (PICKING) CATEGORY
29	260002 212	PADMA KUMARI. KR	BC (OBC M)	239.00	38.2 5	277. 25	GT-W (8/10)
30	010003 136	NALINIDEVI. K	BC (OBC M)	232.00	45.0 0	277. 00	GT-W (9/10)
31	250003 081	ASHOK PRASATH.G	BC (OBC M)	238.00	38.2 5	276. 25	BC (OBCM) -G (6/23)
32	170001 012	EZHILARASI. P	BC (OBC M)	237.00	38.2 5	275. 25	GT (W) - (PSTM) (2/4)
33	010007 122	STARLI.J	BC (OBC M)	237.00	38.2 5	275. 25	GT (W) - (PSTM) (3/4)
34	010002 166	RADIKA.V	BC (OBC M)	230.00	45.0 0	275. 00	GT (W) - (PSTM) (4/4)
35	010004 029	CHANDRAKASA BOOPATHI.K	BC (OBC M)	236.00	38.2 5	274. 25	BC (OBCM) -G (7/23)
36	010006 056	ALLI.P	BC (OBC M)	229.00	45.0 0	274. 00	BC (OBCM) -G (8/23)
37	020001 135	PRAVEEN KUMAR.T	BC (OBC M)	229.00	45.0 0	274. 00	BC (OBCM) -G (9/23)
38	190001 146	GEETHA.V	BC (OBC M)	235.00	38.2 5	273. 25	BC (OBCM) -G (10/23)
39	020001 095	VIGNESHMADH U.K	BC (OBC M)	235.00	38.2 5	273. 25	BC (OBCM) -G (11/23)
40	260001 006	RAJA RAMYA	BC (OBC M)	255.00	18.0 0	273. 00	BC (OBCM) -G (12/23)
41	010007 237	SHANMUGAM.K	BC (OBC M)	234.00	38.2 5	272. 25	BC (OBCM) -G (13/23)
42	100005 117	KANNAN.A	BC (OBC M)	239.50	31.5 0	271. 00	BC (OBCM) -G (14/23)

S l. No	REG.No	NAME	CAST E	WRITTE N EXAM MARKS	ORAL TEST MARK S	TOTA L MARK S	SELECTION (PICKING) CATEGORY
43	100004 239	NILAVESHWAR AN.N	BC (OBC M)	226.00	45.0 0	271. 00	BC (OBCM) -G (15/23)
44	170001 208	MALATHI.T	BC (OBC M)	239.00	31.5 0	270. 50	BC (OBCM) -G (16/23)
45	100003 258	RAJASEKAR.C	BC (OBC M)	225.00	45.0 0	270. 00	BC (OBCM) -G (17/23)
46	170002 020	SRIDEVI.P	BC (OBC M)	231.00	38.2 5	269. 25	BC (OBCM) -G (18/23)
47	020001 217	RAMESH.N	BC (OBC M)	224.00	45.0 0	269. 00	BC (OBCM) -G (19/23)
48	190002 091	ACHUTHAN.V	BC (OBC M)	223.00	45.0 0	268. 00	BC (OBCM) -G (20/23)
49	260001 238	SUMITHA.P	BC (OBC M)	243.00	24.7 5	267. 75	BC (OBCM) -G (21/23)
50	270001 065	KALIMUTHUVE L.M	BC (OBC M)	235.00	31.5 0	266. 50	BC (OBCM) -G (22/23)
51	100003 082	RUBANA.G	BC (OBC M)	221.00	45.0 0	266. 00	BC (OBCM) -G (23/23)
52	010004 094	VANNAMALAR. V	BC (OBC M)	221.00	45.0 0	266. 00	BC (OBCM) -G (PSTM) (1/5)
53	100006 152	ASWIN RAJASIMMAN. T	BC (OBC M)	248.00	18.0 0	266. 00	BC (OBCM) -G (PSTM) (2/5)
54	010008 209	RAMKUMAR.K	BC (OBC M)	234.00	31.5 0	265. 50	BC (OBCM) -G (PSTM) (3/5)
55	260001 154	SINDHU MATHI.T	BC (OBC M)	233.50	31.5 0	265. 00	BC (OBCM) -G (PSTM) (4/5)

S l. No	REG.No	NAME	CAST E	WRITTE N EXAM MARKS	ORAL TEST MARK S	TOTA L MARK S	SELECTION (PICKING) CATEGORY
56	100001 089	RAMASANKARA N.G	BC (OBC M)	240.00	24.7 5	264. 75	BC (OBCM) -G (PSTM) (5/5)
57	260002 216	BHARATHA DEVI.V	BC (OBC M)	240.00	24.7 5	264. 75	BC (OBCM) - W- (1/10)
58	020002 040	PADMAPRIYA. A K	BC (OBC M)	226.00	38.2 5	264. 25	BC (OBCM) - W- (2/10)
59	170002 008	MALATHI. K S	BC (OBC M)	218.00	45.0 0	263. 00	BC (OBCM) - W- (3/10)
60	170001 204	PRAVEENA. M	BC (OBC M)	230.50	31.5 0	262. 00	BC (OBCM) - W- (4/10)
61	020002 216	NITHYAKALA. T	BC (OBC M)	230.00	31.5 0	261. 50	BC (OBCM) - W- (5/10)
62	010008 004	KALAIARASI. K M	BC (OBC M)	222.00	38.2 5	260. 25	BC (OBCM) - W- (6/10)
63	010004 286	ROSELIN. B	BC (OBC M)	227.50	31.5 0	259. 00	BC (OBCM) - W- (7/10)
64	010006 208	INIYA KARUNAGARAN	BC (OBC M)	226.00	31.5 0	257. 50	BC (OBCM) - W- (8/10)
65	100002 112	GURULAKSHMI . RD	BC (OBC M)	212.00	45.0 0	257. 00	BC (OBCM) - W- (9/10)
66	010005 046	PREETHI. N	BC (OBC M)	212.00	45.0 0	257. 00	BC (OBCM) - W- (10/10)
67	020001 096	SHOBA DEVI. D	BC (OBC M)	231.00	24.7 5	255. 75	BC (OBCM) - W- (PSTM) (1/2)
68	190001 132	SIVAGAMASUN DARY. V	BC (OBC M)	224.00	31.5 0	255. 50	BC (OBCM) - W- (PSTM) (2/2)

S l. No	REG.No	NAME	CAST E	WRITTE N EXAM MARKS	ORAL TEST MARK S	TOTA L MARK S	SELECTIO N (PICKING) CATEGORY
69	010008 147	WITHHELD					

8. Learned counsel for respondents 1 and 2 submitted that on Vengadalakshmi.S (Sl.No.10) and Rs.Aswin Rajasimman.T (Sl.No.53) had not joined service in the place of Vengadalakshmi.S, a woman candidate by name Miss Reena had been appointed while in the place of Aswin Rajasimman.T G. Manikumar, a BC (OBC M) candidate, whose candidature in the category of the petitioner, had been placed above the petitioner in the reserve list, had been appointed.

9. On perusal of the above proforma learned Senior Counsel, in his usual fair fashion, submitted that it was not the intent of the petitioner in W.P.No.25778 of 2015 to deprive any other who was duly entitled and that the study of the proforma reveals that the selection process indeed had been properly gone through. Learned Senior counsel however submitted that as a person on the reserve list, petitioner was entitled to be accomodated should vacancy arise. Learned Senior Counsel submitted that both petitioner in W.P.No.25778 of 2015 on whose behalf he had made submissions as also the petitioner in W.P.No.5629 of 2018 had been raised by single parents and both of them were deserving.

10. Learned counsel for petitioner in W.P.No.5629 of 2018 submitted that such petitioner, a woman candidate had been placed on the reserve list and consequential to Miss. Sujatha.K (Sl.No.24) having left service, his client became entitled to be accomodated against such vacancy. While learned counsel for second respondent in W.P.No. 5629 of 2018 would concede such position, Mr.M.Baskar learned counsel for third respondent submitted that the Committee for Selection and Appointment of District Judges (Entry Level) and Civil judges, had resolved at its meeting on 09.01.2018 as follows: ' Since the process has already started for fresh Notification, it is resolved that vacancy arising on account of resignation of Ms.K.Sujatha, in the cadre of Civil Judge can be filled up in the proposed selection process, where already steps have been taken and draft notification has been submitted by TNPSC.'

'In publishing the registration number of candidates selected provisionally for appointment by direct recruitment to the post of Civil Judge in the Tamil Nadu State Judicial Service, the TNPSC has inter-alia informed the registration number of candidates and their position in the reserve list for the various categories and specifically informed that 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.

Importantly, it has been informed:

'The Reserve List is valid till the drawal of the next selection list for this post by the Commission.'

11. Both petitioners have undergone the due process of selection and have been informed of being placed in the reserve list. Both suffered no disqualification whatsoever. For both of them to expect that they would be appointed in proper turn as and when vacancies arise is but legitimate expectation. To be so appointed is their vested right. Whiles, in the humble opinion of this Bench, it would not be open to the Committee for Selection and Appointment of District Judges (Entry Level) and Civil judges Committee of this Court to disentitle petitioners by informing that vacancy which arose owing to a candidate stepping out of office should be pooled in for consideration in the proposed selection process. To repeat, in publishing the register number of candidates selected provisionally it has been informed that the reserve list would be valid till the drawal of next selection list for the post. A Division Bench of this Court in, *The Secretary, Tamilnadu Public Service Commission vs. R.Nagappan & Others* (2008-3-LW-222) held :

"12. Though 10(a)(i) provides for allotment from reserve list for the vacancy in the place of those who have not joined duty, it cannot be strictly interpreted so as to exclude resultant vacancies caused due to candidates joined and subsequently left/resigned. The very purpose of Subordinate Service Rules is to sub-serve the interest of the public and the process of selection. No doubt a candidate has indefeasible right to be appointed for the post, but when the Writ Petitioners have been placed in the reserve list, it is a fallacy to argue that they cannot be appointed in the resultant vacancies. We are of the view that if such interpretation is to be adopted, the expression "such reserve list will be in force.... until the drawal of next selected list by the commission", would defeat the intention of the Legislature. We are of the view that a meaningful interpretation of rule 10(a)(i) would

sub-serve the interest of the public. In fact, having noticed the anomaly, the Government has issued amendment to rule 2 of Part I and Rules 10(a)(i)(i) and 22 (d) under Part II of the General Rules for the Tamil Nadu State and Subordinate Services to the effect that "the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty but left thereafter while the reserve list is in force....."

Applicable Rule 2(15-A) of the Tamil Nadu State and Subordinate Service Rules (corresponding to Sec. 3u of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016) read:

"15-A "Reserve List" Reserve list shall mean a list which is prepared so as to contain not less than 25% of the candidates of each reservation group including General Turn in the regular list and shall in force until the regular list is drawn up subsequently."

12. Following the rationale of the judgment of this Court in The Secretary, Tamilnadu Public Service Commission vs. R.Nagappan & Others (2008-3-LW-222), this Court holds that petitioner in W.P.No.5629 of 2018 is entitled to appointment against the vacancy that had arisen on the resignation of Miss sujatha.K and petitioner in W.P.No.25778 of 2015 would be entitled for consideration of appointment should vacancy in his category of eligibility arise before the drawing up of the subsequent regular list.

13. Accordingly, the first respondent in W.P.No.5629 of 2018 is directed to appoint petitioner Mrs. R.Vijayalakshmi to the post of Civil Judge (Junior Division) in the Tamil nadu State Judicial Service, if otherwise eligible.

(ii) Fourth respondent in W.P.No.25778 of 2015 is directed to favorably consider appointment of petitioner therein, if otherwise eligible should vacancy arise in his category of entitlement before the preparation of the subsequent regular list.

Writ petitions are disposed as above. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary
Tamilnadu Public Service Commission
Frazer Bridge, V.O.C.Nagar
Park Town, Chennai-600 003

2.The Controller of examinations
Tamilnadu Public Service Commission
Frazer Bridge, V.O.C.Nagar
Park Town, Chennai-600 003

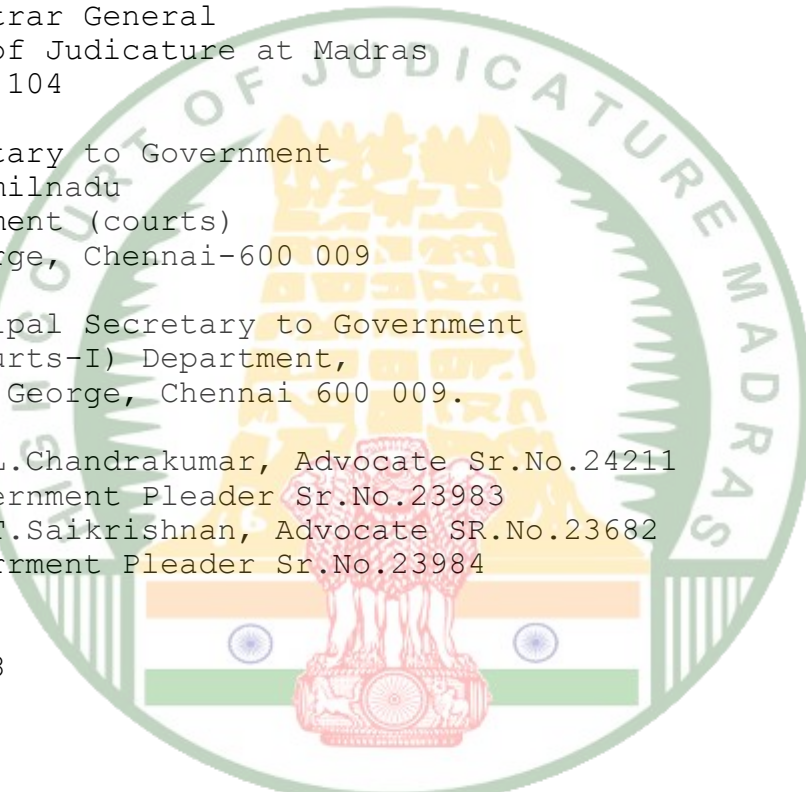
3.The Registrar General
High Court of Judicature at Madras
Chennai-600 104

4.The Secretary to Government
State of Tamilnadu
Home Department (courts)
Fort St.George, Chennai-600 009

5.The Principal Secretary to Government
Home (Courts-I) Department,
Fort St. George, Chennai 600 009.

+2cc to Mr.L.Chandrakumar, Advocate Sr.No.24211
+1cc to Government Pleader Sr.No.23983
+1cc to Mr.T.Saikrishnan, Advocate SR.No.23682
+1c to Government Pleader Sr.No.23984

SKV(CO)
sm:10.4.2018



order in
W.P.Nos.25778 of 2015 and 5629 of 2018
and
M.P.No.2 of 2015
WMP.Nos.2013,2014, 6962 of 2018

WEB COPY