



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.A(MD)No.306 of 2018

and

C.M.P(MD)Nos.1920 and 1921 of 2018

Anbarasan

... Appellant/Petitioner

Vs.

1.The Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai - 7.

2.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Chennai - 3.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order dated 05.02.2018 in W.P(MD)No.15009 of 2016 passed by learned Judge and allow the writ appeal.

Prayer in WP(MD). 15009/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Memo NO. 5927/PSD-E/2014, dated 25.07.2016 issued by the 2nd respondent and quash the same as being illegal, arbitrary and unconstitutional and consequently issue a direction to the respondents to consider and grant appointment to the petitioner based on the selection held pursuant to the Notification No. 7/2014 dated 13.07.2014 to the post of Village Administrative Officer with all attendant benefits.

For Appellant

:Mr.C.Chandrasekar for
Mr.A.Rahul

For R-1

:Mr.A.K.Baskarapandian,
Special Government Pleader

<https://hcservices.ecourts.gov.in/hcservices/>

For R-2

:Mr.D.Sivaraman

**JUDGMENT**

(Order of the Court was made by DR.ANITA SUMANTH, J.)

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The appellant applied to the post of Village Administrative Officer in the category of MBC for the year 2013-2014 pursuant to a notification issued by the Tamil Nadu State Public Service Commission, the second respondent (in short and hereinafter 'TNPSC') dated 17.03.2014. He was successful in the test conducted and was called upon to attend the certificate verification. The communal rank of the appellant was 732 and the counselling for the MBS category, unfortunately for him, stopped short by three numbers, at item 729.

2. He sought and obtained information under the Right to Information Act, as to the number of candidates who had been appointed but did not join. The sum and substance of the averments of the appellant was that since candidates at serial nos.730 and 731 did not attend the counselling, he was ranked first in the waiting / reserved list and ought to have been called upon and appointed in the vacancies caused by non-joining of selected candidates.

3. In this regard, the appellant /writ petitioner placed reliance upon two judgments of the Supreme Court in the cases of Gujarat State Dy. Executive Engineers' Association v. State of Gujarat and others (1994 Supp (2) Supreme Court Cases 591) and Surinder Singh v. State of Punjab (1997 8 SCC 488).

4. The Supreme Court, in the judgment first cited, dealt with the entitlement of candidates featured in a waiting / reserved list concluding that such candidate does have a right to claim appointment in case of a vacancy created by the failure of other candidates to join. The Bench however made it clear that such entitlement operates only during the period when the waiting/reserved list operates or within a reasonable period where no such period is provided and also made it clear that the candidate would have no right to appointment in any future vacancy that may arise.

5. The Full Bench at paragraph no.8 of the judgment in the case of Gujarat State Dy. Executive Engineers' Association (supra) states as follows:

\...

8.Coming to the next issue, the first question is what is a waiting list?; can it be treated as a source of recruitment from which candidates may be drawn as and when necessary?; and lastly how long can it operate? These are some important questions which do arise as a result



of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually, it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent authority prepares a waiting list then it is in respect of those 10 seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidates does not join. But one the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. He has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.

....'

6. Though the above cases have been cited by the appellant even before the learned single judge, his contentions were negatived in writ petition on the ground that that no substantive right had been acquired by the writ petitioner and as such, he could not claim an appointment simply by virtue of his placement at the top of the



waiting / reserved list.

7. Mr.Chandrasekar learned counsel appearing for Mr.Rahul, learned counsel for the appellant, Mr.Baskarapandian, learned Special Government Pleader appearing for the State and Mr.Sivaraman, learned standing counsel appearing for the TNPSC, are largely agreed on the procedure to be followed in matters of such appointments, in line with the judgements cited and extracted above.

8. The learned counsels for the respondents also do not dispute the existence of a waiting/reserved list featuring candidates including the appellant herein.

9. It is however, the case of the TNPSC that the appointment of candidates who are waiting in the wings would arise only upon a requisition by the Government in this regard. Thus, according to the TNPSC, it is required to furnish the details of waiting candidates only if a specific request is made by the State indicating the number of vacancies that await filling.

10. In the present case, the appellant / writ petitioner had obtained information under the RTI Act to the effect that there were several vacancies caused by the reason of candidates not joining after receipt of appointment orders. Further, this Court had sought specific information from the first respondent, the State, in this regard. An affidavit has been filed by the District Collector, Madurai dated 10.07.2018 where, at paragraph 3, the District Collector confirms that twelve persons had not joined duty as on 10.11.2017. There thus is no dispute on the position that vacancies did, in fact, exist.

11. However, we are of the view that the timelines to be established pursuant to the judgment of the Full Bench of the Supreme Court in Gujarat State Dy. Executive Engineers Association, (supra) are still unclear in this case and the entitlement of the appellant can be ascertained only upon a determination of the same. As per the dictum of the Full Bench, the following factors need to be ascertained:

(i)The period of operation of the waiting / reserved list and if not stipulated, the reasonable period to be inferred in the light of the position as admitted by Mr.Saravanan, learned counsel for TNPSC, that the counselling for MBC for 2013-14, concluded on 03.09.2015.

(ii)The joining period provided to the selected candidates and the last date within which a selected candidate has to report to the post.

12. Clearly no entitlement exists beyond 30.06.2016 when the results of the recruitment for the year 2014-2015 had been finalised and published. We are of the view that a proper adjudication of the



issue raised by the appellant can be made only upon a determination of the aforesaid dates / information.

13. The culprit in the present case is clearly the first respondent, who has been silent in the course of the writ proceedings. No counter has been filed that could have been provided the missing pieces of the puzzle. Even at the stage of writ appeal while the direction of this Bench was specifically to the State to provide information regarding vacancies, only the District Collector files an affidavit and that too, one that is bereft of the required particulars.

14. In the aforesaid circumstances, we believe that this matter requires re-adjudication after consideration of a counter to be filed by the State along the lines of the judgment in the case of Gujarat State Dy. Executive Engineers' Association(supra).

15. The matter is remanded to the file of the learned single Judge. The first respondent / State is directed to file a counter to the writ petition, within a period of two weeks from the date of receipt of a copy of this order.

16. TNPSC as well as the appellant may file their reply to the counter within a further period of two weeks from the date of receipt of counter from the State.

17. We are informed by the learned counsel for the TNPSC that the present litigation is holding up several other appointments and in the light of the same, we request the learned single Judge to consider disposing of the writ petition as expeditiously as possible.

18. The writ appeal is allowed by way of remand. No Costs. Consequently, connected miscellaneous petitions are closed.

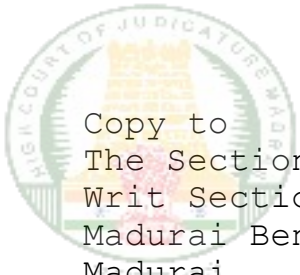
Sd/-

Assistant Registrar (CO)
/True Copy/

Sub Assistant Registrar(CS-II)

To

The Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.



Copy to
The Section Officer,
Writ Section,
Madurai Bench Of Madras High Court,
Madurai.

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+1CC to Mr.A.Rahul Advocate in SR.No.72706.

+1CC to Mr.D.Sivaraman Advocate in SR.No.72637.

PM

DS/RP/SAR-2 : 6P/5C

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