



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P(MD).Nos.23739 of 2017, 23380 & 23381 of 2017, 22283 to 22290 of 2017, 24051 of 2017, 1072 of 2018

and

M.P(MD).Nos.19934, 19646, 19647, 20189 of 2017 & 1120 of 2018

G.Kamal George .. Petitioner in
W.P(MD).No.23739 of 2017

S.Prabhu .. Petitioner in
W.P(MD).No.23380 of 2017

S.Thirupathi .. Petitioner in
W.P(MD).No.23381 of 2017

B.Kubendran .. Petitioner in
W.P(MD).No.22283 of 2017

T.Suresh .. Petitioner in
W.P(MD).No.22284 of 2017

S.Venkatasamy .. Petitioner in
W.P(MD).No.22285 of 2017

B.Shanmugaraj .. Petitioner in
W.P(MD).No.22286 of 2017

C.Shanmugaraju .. Petitioner in
W.P(MD).No.22287 of 2017

Gurusamy .. Petitioner in
W.P(MD).No.22288 of 2017

T.Kannan .. Petitioner in
W.P(MD).No.22289 of 2017

P.Govindasamy .. Petitioner in
W.P(MD).No.22290 of 2017

T.Muruganantham .. Petitioner in
W.P(MD).No.24051 of 2017



Vs.

The Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar,
Park Town,
Chennai-3.

.. Respondent
in all WPs

COMMON PRAYER in W.P(MD).Nos.23739, 23380, 23381 24051 of 2017 and 1072 of 2018: Petitions filed under Article 226 of Constitution of India, issue a Writ of Mandamus, directing the respondent to call for the petitioners for oral test/interview in view of the successful completion of the preliminary examination dated 26.07.2015 and main written examination dated 21.08.2016 and certificate verification held on 26.10.2017 27.10.2017 27.10.2017 01.11.2017 and 02.11.2017 in respect of the recruitment to the post included in the combined Civil Services Examination II (Interview Posts) (Group II Services) 2014-2015 and 2015-2016 as per the notification published by the respondent in Notification No.7 of 2015 dated 30.04.2015.

COMMON PRAYER in W.P.(MD).Nos.22283 to 22290 of 2017: Petitions filed under Article 226 of Constitution of India, issue a Writ of Mandamus, directing the respondent to call for the petitioners for oral test in the shape of an interview in view of the successful completion of the preliminary examination dated and main written examination and certificate verification held on 31.10.2017, 31.10.2017, 01.11.2017, 01.11.2017, 01.11.2017, 01.11.2017, 25.10.2017, 24.10.2017 in respect of the recruitment to the post included in the combined Civil Services Examination II (Interview Posts) (Group II Services) 2014-2015 and 2015-2016 as per the notification published by the respondent dated 30.04.2015 in Notification No.7 of 2015.

For petitioners in : Mr.J.Jeyakumaran
WP(MD)Nos.23739, 23380, 23381 ,
24051/17 and 1072/2018

For Petitioners in WP(MD)Nos.22283 to 22290/2017:
: Mr.A.Saravanan

For Respondent : Mr.K.K.Senthil
in all WPs



COMMON ORDER

The petitioners in all these petitions are Ex-Service men, who served in the Indian Army for a long number of years. They had earlier appeared in Civil Services Examination (Group-II) conducted by the respondent/Commission and secured appointment as Assistants in the Registration Department.

2.While so, the Tamil Nadu Public Service Commission issued recruitment notification dated 30.04.2015, inviting applications for direct recruitment to the vacancies for the years 2014-2015 and 2015-2016, for the posts included in Civil Services Examination Interview post (Group II) Services. The petitioners applied in response thereto. They were issued hall tickets and allowed to write the preliminary examination that was held on 26.07.2015. The main written examination was held on 21.08.2016 and the petitioners took part therein also. Their certificates were verified on different dates. The last stage was holding of interview. But the petitioners were not called for interview. This was on account of issuance of G.O.(Ms).No.89, Personnel and Administrative Reforms (s) Department, dated 12.08.2015, whereby the General Rules for Tamil Nadu State and Subordinate Service Rules were amended. On account of the amendment made by the said Government Order, an Ex-serviceman once recruited to a post in any class or service or category, cannot claim the concession of being called an ex-serviceman for his further recruitment. In the present case, the petitioners have already been recruited to the post of Assistants. Therefore, they cannot claim the concession of being called an ex-serviceman in the present recruitment process. Aggrieved by the same, these Writ petitions have been filed for directing the respondent to call them for oral test/interview, since they have already successfully completed the preliminary examination, the main examination and also the certificate verification process

3. The contention raised by the petitioners is that the Government order amending the relevant rules were issued only on 12.08.2015. Whereas, in the present case, the recruitment notification was issued on 30.04.2015. On the date of issuance of the recruitment notification, the petitioners were treated as ex-servicemen for recruitment to the post in question. Those vested rights have already accrued in their favour and this cannot be divested by the amendment, which was made subsequently. The learned counsel for the petitioner placed considerable reliance on the decision of the Hon'ble Supreme Court reported in (2008) 3 SCC 512 (*K.Manjursree Vs. State of Andhra Pradesh and another*), wherein it is held that the rules of the game cannot be changed after the commencement of the game. The said principle has been applied in a number of decisions that arose out of service law litigation. In the case of selection process which has already commenced, the respondent would not be justified in altering the rules of selection process later in point of time.



4. Mr. K. K. Senthil, learned standing counsel, appearing for the respondent contended that the application of the said decision is now the subject matter of reference pending before a larger bench. He drew the attention of this Court to the order of reference which has been reported in (2013) 4 SCC 540 (*Tej Prakash Pathak and others Vs. Rajasthan High Court and others*). He would also contend that the petitions are not maintainable.

5. Heard the learned counsel on either side.

6. This Court is of the view that the decision relied on by the learned Standing counsel for the respondent reported in (2015) 11 SCC 440 (*M. I. Kunjankunju and others Vs. State of Kerala and others*) applies to the facts of the case. The Hon'ble Supreme Court held that a candidate on making an application for the post pursuant to the advertisement does not acquire any vested right for selection. The Hon'ble Supreme Court also relied on an earlier decision reported in (1990) 3 SCC 157, wherein it is held that if the recruitment rules are amended having retrospective effect during the pendency of the selection, in that event, the selection must be held in accordance with the amended rules. In the present case, the relevant service rules have been amended vide G.O. (Ms). No. 89, Personnel and Administrative Reforms (s) Department, dated 12.08.2015 and it was deemed to have come into force with effect from 16.12.2002. It is also seen that the said Government Order is not under challenge in any of the petitions. This Court is not able to agree with the learned counsel for the petitioner that need not challenge the said Government Order. The Tamil Nadu Public Service Commission alone has been shown as the respondent. The Government of Tamil Nadu has not been impleaded as a party respondent. The Tamil Nadu Public Service Commission is only a recruitment agency. It is clearly bound by the orders of the Government.

7. The Writ Petitions are liable to be dismissed for three reasons.

1. The Government Order amending the recruitment rules has not been challenged.

2. The State of Tamil Nadu has not been made a party.

3. In any event in view of the decision of the Hon'ble Supreme Court reported in 2015 11 SCC 440 (*M. I. Kunjankunju and others Vs. State of Kerala and others*), the petitioners' rights cannot be said to have been infringed because by mere participation in the selection process no right for selection can be acquired.

8. There is no merit in the Writ Petition.



9. The Writ Petitions stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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/True Copy/

Sd/-

Assistant Registrar(C.O)

Sub-Assistant Registrar

To

The Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar,
Park Town,
Chennai-3.

+One cc to Mr.K.K.Senthil, Advocate, SR.No.43172

+One cc to Mr.A.Saravanan, Advocate, SR.No.43054

+5ccs to Mr.J.Jeyakumaran, Advocate, SR.Nos.42994 to 42998

tsg

RL/9C/5P/SV/MMS/SAR1/16/2/2018

Order made in
W.P(MD).Nos.23739 of 2017, 23380 & 23381 of
2017, 22283 to 22290 of 2017, 24051 of 2017
& 1072 of 2018

19.01.2018