

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29/04/2019

DATED : 30.04.2019

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.34444 of 2012

And

M.P.No. 2 of 2012

G.Karthick ... Petitioner

Versus

1. State of Tamil Nadu represented by its
Secretary to Government
Personnel & Administrative Reforms Department
Secretariat, Chennai - 600 009.
2. The Secretary
Tamil Nadu Public Service Commission
Chennai - 600 006 ... Respondents

PRAYER:Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the second respondent Commission with regard to the notification of distribution of vacancies published on the website of the second respondent Commission with regard to the allocation of vacancies within BC Tamil medium category and the consequential list of candidates selected for interview posts published on 09.10.2012 and the consequential list of candidates selected for non interview posts on 20.11.2012 so far as the non inclusion of the petitioner in the said lists and quash the same and consequently direct the second respondent commission to allocate the posts within BC Tamil medium category following the Tamil Nadu State and Subordinate Services Rule 21b and Rule 21(ab) and confine the allocation for women to 30% and to Ex-servicemen to 5% respectively and consequently direct the second respondent commission to select and appoint the petitioner to an interview post in Tamil Nadu Combined Subordinate Service examination-I notified by the second respondent vide advertisement No.258 dated 30.12.2010 and supplement adv. No. 265, dated 08.02.2011.

For Petitioner :: Ms. Dakshayani Reddy

For R1 :: Mr. P.S.Siva Shanmuga Sundaram
Special Government Pleader

For R2 :: Mr.M.Loganathan

ORDER

The Writ Petition had been filed by the petitioner, in the nature of a Writ of Certiorarified Mandamus calling for the records of the second respondent Tamil Nadu Public Service Commission relating to the notification of distribution of vacancies published on their website with regard to the allocation of vacancies within BC Tamil medium category and the consequential list of candidates selected for interview posts published on 09.10.2012 and the consequential list of candidates selected for non interview posts on 20.11.2012 and quash the same in so far as the non inclusion of the petitioner in the said lists and consequently direct the second respondent commission to allocate the posts within BC Tamil medium category following the Tamil Nadu State and Subordinate Services Rule 21b and Rule 21(ab) and confine the allocation for women to 30% and to Ex-servicemen to 5% respectively and consequently direct the second respondent commission to select and appoint the petitioner to an interview post in Tamil Nadu Combined Subordinate Service examination-I notified by the second respondent vide advertisement No.258 dated 30.12.2010 and supplement adv. No. 265, dated 08.02.2011.

2. The writ petitioner had applied for the Combined Subordinate Services Examination - I (Examination Service Code No. 004) for which advertisements were issued on 30.12.2010 and 08.02.2011 by the second respondent, Tamil Nadu Public Service Commission. In the said advertisement, 16 categories of posts in the interview category and 22 categories of posts in the non-interview category were called for. The number of vacancies notified were 6695 out of which 2701 were for interview posts and 3991 were for non-interview posts. The petitioner belonged to Backward Class community and had also studied in Tamil Medium. He passed Bachelor of Literature in Tamil from Annamalai University in the year 2009 in first Class. For interview posts, selection would be in two stages, namely, written examination and oral test. For non-interview posts, selection would be made only on the basis of the total marks in the written examination. The petitioner obtained 229.5 marks in the written examination. The cut off marks for Backward Class Tamil Medium for common degree posts was 228, for ASO Finance was 204 and for Junior Co-operative Auditor was 225. The

petitioner was called for certificate verification on 25.06.2012 and for oral test on 27.06.2012. The petitioner obtained 27 marks in the oral test and thus, totally obtained 256.5 marks totally. When the list of candidates was published on 09.10.2012 for counselling, the petitioner's name did not find place. When the list for non-interview posts was published on 20.11.2012, the petitioner's name was not found. The petitioner thereafter gave a representation. It was stated that the second respondent Commission had not selected the candidates in accordance with rules. The petitioner stated that the candidates, who had obtained lesser marks than him had been selected. It was also stated that he should be given priority because he studied in Tamil Medium. The Writ Petition had been filed in the nature of certiorarified Mandamus to call for the records of the second respondent Public Service Commission and direct the second respondent to allocate the post with BC Tamil Medium category following Tamilnadu State and Subordinate Rule 21(B) and 21(ab) and direct the second respondent to select and appoint the petitioner to an interview post.

3. The second respondent filed a counter and an additional counter affidavit. In the counter affidavit filed by E.Sugumaran, Joint Secretary of Tamil Nadu Public Service Commission, Chennai, it had been stated that the petitioner had obtained 229.50 marks in the written examination and 27 marks in the oral test. He belonged to the category of Backward Class (G) and PSTM. It had been stated that more than one month was taken to fill up the vacancies in the oral test. It had been further stated in paragraph No. 7 as follows:-

"7. It is submitted that the candidates were picked up against each communal category first for common posts, then for Assistant in Finance Department, Assistant in Law Department, Personal Clerk in Finance Department and Personal Clerk in Secretariat other than Finance Department as per the sequence mentioned above, based on the qualifications possessed by the candidates. In the process, certain candidates who have obtained lesser marks, than those who possess common qualifications, have been admitted to counselling by virtue of possessing specific qualification(s) prescribed for the posts other than common posts, as candidates who possess common qualification cannot be selected for the special qualification posts."

(Emphasis supplied)

4. It had also been stated that for the non-interview posts, the cut off mark for written examination were 231.00, 256.50, 246.00 and 243.00 in the admission for first to fourth phase respectively. It was stated that since the petitioner had obtained in 229.50 posts, he was not eligible for selection.

5. In the additional affidavit counter affidavit filed by N. Saraswathi, Joint Secretary, Tamil Nadu Public Service Commission, it had been stated that Rule of reservation of appointment was applied separately for each post. It was stated that the selection in respect of non-interview post were taken only after the finalisation of the selection for interview post, by excluding those who had been selected. It was stated that with respect to the 20% preferential claim for PSTM, both horizontal and vertical manner of reservation was followed for every recruitment in terms of the Government policy. It was stated that the petitioner cannot find fault since his right to be considered were limited to as his educational qualification, community status and other parameters all of which were considered by the second respondent. It was stated that the petition has to be dismissed.

6. I have heard arguments advanced by Ms.Dakshayani Reddy, learned counsel for the petitioner and Mr. P.S.Siva Shanmuga Sundaram, learned Special Government Pleader appearing for the first respondent and Mr.M.Loganathan, learned counsel appearing for the second respondent.

7. The petitioner belongs to Backward Class community. He had studied B.A. Literature (Tamil) from Annamalai University. He had applied for the recruitment notification issued vide advertisement No. 258/1, dated 30.12.2010 and the supplemental advertisement No. 265/1 dated 08.02.2011 issued by the second respondent for Combined Subordinate Service Examination-I (Examination Service Code No. 004). The total number of vacancies were 6695. Out of the same 2701 were for interview posts for 16 categories and 3991 were for non-interview posts for 22 categories. Since the petitioner had also studied in Tamil Medium, he was also eligible for preferential reservation under the Persons Studied in Tamil Medium (PSTM) quota. However, the learned counsel for the writ petitioner during the course of arguments stated that the petitioner is not claiming the post or the relief on the basis of such reservation quota.

8. On the other hand, the main thrust of the learned counsel for the writ petitioner was that the petitioner had obtained 229.50 marks in the written test. This is admitted by the respondents. The petitioner also attended oral interview and obtained 27 marks, thus had totally obtained 256.5 marks. This fact is also admitted by the respondent. In the details of

marks obtained by other candidates published in the website of the second respondent, the learned counsel for the petitioner relied on the following details:-

MARKS OBTAINED BY THE LAST CANDIDATE IN EACH COMMUNAL CATEGORY/POST WERE ARE SUMMONED TO ORAL TEST:

COMMUNAL CATEGORIES	MARKS OBTAINED BY THE LAST CANDIDATE	DATE OF BIRTH	POSTS NAME
x			
x			
x			
x			
x			
x			
Backward Class - OTM - (General) - Tamil Medium	228.00	15.07.1980	COMMON DEGREE POSTS
	204.00	27.05.1979	A.S.O (FINANCE)
	225.00	01.07.1979	JR.CO-OPAUDITOR
x			
x			

9. According to the learned counsel for the writ petitioner, the candidate last selected had obtained 228 marks for Common Degree Posts and 204 marks for ASO Finance Arts and 225 marks for Junior Co-operative Auditor. The petitioner had obtained 229.5 marks which was more than the marks obtained by the last selected candidate for each of the three mentioned posts. Consequently, the learned counsel claimed a post for the petitioner as a matter of right.

10. In this connection the very same selection of the second respondent, for which the petitioner had applied had come up for consideration before this Court earlier. In a batch of writ petitions in W.P.Nos. 35048 to 35050 etc., of 2012, a learned Single Judge of this Court by Judgement dated 11.11.2014 had relied on an earlier Judgement of another learned Single Judge of this Court in W.P.Nos. 14410 & 14411 & 8069 of 2014 dated 27.06.2014.

11. In the Judgement in W.P.Nos. 35048 to 35050 etc., of

2012, the following paragraphs of the Judgement in W.P.Nos. 14410 & 1441 & 8069 of 2014 dated 27.06.2014, had been extracted with advantage to the writ petitioners therein and it would only be just, to maintain consistency and clarity that this Court also does the same:-

"6. According to the petitioners, four other persons by names K.Rama, A.Kavitha, R.Suresh and M.Karuppiyah, who had secured lesser marks than petitioners were also called for Certificate Verification, for non-interview posts and were selected, whereas, the petitioners, who have secured 229.5, 225 and 231 were not called for Certificate Verification and they were not selected. It is also stated by the petitioners that one candidate, who has secured 211.50 was selected as against the General Turn, for the post included in Clause 19 of the Prospectus. Thus, according to the petitioners, the non-selection of the petitioners is illegal and therefore, they are before this Court with these writ petitions.

7. In the counter filed by the Joint Secretary, Tamil Nadu Public Service Commission, Chennai, the above stand taken by the petitioners is factually admitted. In paragraph No.5 of the counter, it is stated as follows:

"5. It is respectfully submitted that this was the first time that the process of counselling was introduced and due to large volume of candidates had been summoned for counselling, and due to absence of some candidates summoned for counselling and unwillingness expressed by of some candidates during counselling, the petitioners have been omitted from being taken which is purely a genuine mistake. Counselling system now in practice has been modified appropriately and such mistake will not occur now. The above petitioners as indicated will be accommodated in the next phase of counselling."

8. The learned Senior counsel appearing for the Tamil Nadu Public Service Commission Mr.R.Muthukumarasamy, would submit that these petitioners would be called for Certificate Verification and they will be selected and later appointed based on their marks because they have secured more marks than the cut off marks. The said statement is recorded.

9. In this case, in the original counter filed on 2.4.2014, the TNPSC has tried to justify the non-selection of these petitioners. The stand then taken was that the cut off mark was differently fixed for the candidates who have opted to be appointed in Finance Department and the candidates, who opted to be appointed in the Departments as enumerated in clause 19 of the Prospectus. In other words, according to the stand taken by the TNPSC, for the posts of Assistants in Finance Department, the cut off mark was 229.5, whereas, for the posts included in clause 19 of the Prospectus, it was 231. It was also submitted in the counter that some of the candidates, who were called for Certificate Verification for the posts of Assistants in Finance Department, at the time of counseling, opted to go to public Departments and therefore, they were selected as against those posts though the cut off mark was higher.

10. The learned counsel for the petitioners Ms. Dhakshayani Reddy, however, pointed out from the records available, that one candidate, who had secured 211.50 has been selected as against the posts included in Clause 19. At that juncture, the TNPSC offered to file another affidavit. It is accordingly, today, the affidavit dated 26.6.2014 has been filed, wherein, as I have extracted herein above, in paragraph No.5, the TNPSC has admitted the mistake committed by them. It is now the admitted case of the TNPSC itself that the candidates who have secured the cut off mark for the post of Assistants in Finance Department, ought not have been considered against the post included in clause 19, because, for clause 19, the cut off mark was higher than the cut of mark prescribed for Assistants in Finance Department.

11. From the above tacit admission made by the TNPSC, it is certain that many candidates like the petitioners ought to have been selected have not been selected, whereas, many candidates who ought not to have been selected have been unduly selected. This is not a mere procedural irregularity, but an illegality depriving the rights of the meritorious candidates.

(Emphasis supplied)

12. It is not known to the Court as to how

many candidates have been affected and how many candidates have been unduly selected and appointed. At this length of time, in my considered opinion, it is not possible to repair the loss or error committed by the TNPSC, fully. It is also not possible at this length of time to cancel the entire selection, so as to issue a direction to the TNPSC to hold a fresh verification session. Therefore, as has been admitted in paragraph No.5 of the counter, since the petitioners, who have been illegally rejected are now assured selection and appointment, I do not want to probe further and I wish to confine the relief only to the petitioners in this matter. I am only hopeful that the TNPSC, which has got its own tradition, will avoid any such mistake in future, because, a single mistake committed by the TNPSC may result in huge loss and mental agony to many deserving candidates, who toil much to purchase books, prepare for the examination and write the examination. But for the affidavit today filed, conceding to the mistake committed by the TNPSC, this Court would have even gone to the extent of issuing a direction for a detailed probe, but I desist from doing so hoping that the TNPSC will not allow any such mistake to occur in future.

(Emphasis supplied)

13. In the result, all the writ petitions are allowed. The Tamil Nadu Public Service Commission, as undertaken before this Court, shall call the petitioners soon for Certificate Verification, select them if they satisfy all the other requirements and appoint them as Assistants in any one of the Departments enumerated under Clause 19 of the Prospectus. The said exercise shall be completed within eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

12. In the present case also, the writ petitioner has secured more cut off marks for the interview test and since the facts are the same, I have no hesitation in following the ratio laid down. As a matter of fact, the Judgement in W.P.Nos. 35048 to 35050 etc., of 2012 dated 11.11.2014, was taken up on Writ Appeal by the Public Service Commission in W.A.Nos. 603 to 606 of 2017. The Writ Appeals have been dismissed except for

two candidates, who had obtained lesser marks. In the Writ Appeal, it had been held as follows:-

"9. It appears that the respondents in W.A.Nos. 603 and 605 of 2017 have scored marks more than the last of the candidates selected in the general category. It also appears that out of two of some other candidates who have secured 229.50 marks, one has been selected and the other has not been selected on the ground that the earlier person is senior in age. Further, it is seen that only relying upon the counter affidavit filed by Tamil Nadu Public Service Commission in the earlier order passed in W.P.Nos. 14410 & 14411 of 2014 and 8069 of 2014 dated 27.06.2014 in respect of similarly situated persons like that of the respondents in W.A.Nos. 603 and 605 of 2017, the impugned order was passed. The learned counsel for Tamil Nadu Public Service Commission has submitted that the person who secured 211 marks has been accommodated in the General Merit Category. If that be so, necessarily the respondents in W.A.Nos. 603 and 605 of 2017 have to be accommodated by shifting them to the General Merit Category as a matter of proper arrangement. When candidates in the special category gets more marks than the candidates in the general merit category, they have to be shifted to the general merit category. That exercise has not been done. Further, when already relief has been granted to the similarly situated persons like that of the respondents in W.A.Nos. 603 and 605 of 2017 herein, which has been admitted by Tamil Nadu Public Service Commission in the counter affidavit filed before the learned Single Judge, the respondents in W.A.Nos. 603 and 605 of 2017 are also entitled to the same relief, as held by the learned Single Judge in the impugned common order."

(Emphasis supplied)

13. The learned counsel for the second respondent however pointed out that the very same issue had also been dealt with by the Madurai Bench of Madras High Court. He first pointed out the Judgement in W.P.(MD).No. 7396 of 2013 dated 06.11.2014. He pointed out paragraph No. 12 in particular, which runs as follows:-

"12. This Court, no doubt, finds some force in the arguments advanced by the learned counsel appearing for the petitioner. As per the figures produced, before this Court, by the petitioner, no doubt, the candidates, who have secured 231, 229.5, 231 and 231 marks, who are also younger in age, in comparison to the petitioner, have been selected and appointed in various departments. But, that alone cannot be a criteria to issue a direction in favour of the petitioner. If the arguments advanced by the learned counsel appearing for the petitioner that the candidates, who secured 231 marks, have been selected and appointed are accepted, this Court will be having no answer to 548 candidates, who have secured higher marks than the petitioner and who have not been selected and waiting in the list."

(Emphasis supplied)

14. However, with due respects, I must point out that the aspect raised has also been covered by the Division Bench referred above and the Judgement of the Division Bench is binding on this Court. The learned counsel also pointed out that another Judgement of a learned Single Judge dated 20.06.2016 in W.P.(MD).Nos. 5975 and 5976 of 2016. In that case, the writ petitioners were not granted the relief because, the person whose selection was challenged belonged to PSTM category. In this case, the writ petitioner belongs to PSTM category. Consequently, the petitioner is eligible for the relief as sought for. I hold that the Judgments in W.P.(MD).No. 7396 of 2013 and in W.P.(MD).Nos. 5975 and 5976 of 2016 are distinguishable on facts. The petitioner in the present Writ Petition falls within the same category as other writ petitions in W.P.Nos. 14410 & 14411 & 8069 of 2014 and in W.P.No. 35048 to 35050 etc., of 2012 and hence the relief extended therein is also granted herein.

15. It is also to be kept in mind that in M.P.No. 2 of 2012, the following Order has been passed, in which the petitioner's right has been protected by the Court in the following manner:-

"Any appointment made in pursuant to the notification is subject to the result of the writ petition. Notice. Dated 21.12.2012."

(Emphasis supplied)

16. In view of the settled position of law and binding precedent of the Division Bench of this Court, I have no hesitation in granting the relief sought. The Writ Petition is allowed on the following terms:-

"The Tamil Nadu Public Service Commission, shall call the petitioner soon for Certificate Verification, select him if he satisfies all the other requirements and appoint him as Assistant in any one of the Departments, namely, (i) Common Degree Posts; (ii) A.S.O (Finance); and (iii) JR.Co-op Auditor under Clause 19 of the Prospectus. The said exercise shall be completed within eight weeks from the date of receipt of a copy of this order."

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Secretary to Government
State of Tamil Nadu represented by its
Personnel & Administrative Reforms Department
Secretariat, Chennai - 600 009.
2. The Secretary
Tamil Nadu Public Service Commission
Chennai - 600 006

+1 cc to M/s.Dakshayani Reddy, Advocate, Sr.No. 42901

+1cc to Mr.M.Loganathan, Advocate, S.R.No. 42438 (26/08/2019)

WEB COPY

Order made in

W.P.No.34444 of 2012
And M.P.No. 2 of 2012

VBA (CO)
CSL/02.05.2019