

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Reserved on: 05.12.2019****Pronounced on : 12.12.2019****CORAM****THE HONOURABLE MR. JUSTICE V.PARTHIBAN****Rev.Appln.No.65 of 2018**

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

.. Petitioner

Vs.

1. K.Anandharaj

2.The Commissioner,
Department of Geology and Mining,
Industrial Estate, Guindy,
Chennai - 32.

3.The Secretary to Government,
Public Works Department,
Secretariat, Chennai - 9.

4.Sreenivasa Rao

5.The Secretary to Government,
Department of Geology and Mining,
Secretariat, Chennai - 9.

.. Respondents

PRAYER: Review Petition is filed under Order XLVII Rule 1 r/w Sec.114 CPC, seeking to review the order dated 07.08.2017 passed in W.P.No.23046 of 2014 by this Court.

For Petitioner : Ms.C.N.G.Niraimathi,
SC for TNPSC

For Respondents : Mr.M.Ravi for R1
Mr.K.Bhuvaneswari,
AGP for R2,3 & 5
Mr.S.Gopinathan for R4

ORDER

This Review Petition has been filed against the order dated 07.08.2017 passed by this Court in W.P.No.23046 of 2014, allowing the Writ Petition filed by the writ petitioner/first respondent herein.

2. In the above said Writ Petition, a detailed counter affidavit has been filed on behalf of the review petitioner/Tamil Nadu Public Service Commission (TNPSC) and made submissions on either side.

3. After advertng to the various facts and circumstances of the case and after considering the submissions, particularly

made on behalf of the review petitioner/TNPSC, the following order came to be passed by this Court as found in paragraphs 8 to 14, which are extracted as under:

“8.Upon notice, Mr.M.Devendran, learned counsel entered appearance on behalf of the first respondent and Mr.A.Zakir Hussain, learned Government Advocate entered appearance on behalf of respondents 2, 3 and 5 and the first respondent has filed counter affidavit.

9.In the counter affidavit, it is also admitted that the vacancies arose in the year 2007-08. However, at the time of Notification, G.O.Ms.No.65 Personnel and Administrative Reforms (K) Department dated 27.05.2009 was already in place and therefore the direction contained in the said Government Order had been complied with by providing for special reservation for Arunthathiyar within the Scheduled Caste community. Since the Tamil Nadu Public Service Commission is governed by the orders passed by the Government, the same has been complied with in its letter and spirit. According to the counter, the date of Notification alone should be reckoned for the purpose of

application of Government Orders or Rules in force regardless of the date of orders.

10. At this, learned counsel appearing for the petitioner would contend that G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010 is very clear that reservation as provided for in the consequential direction would apply only to the vacancies which arise after 29.04.2009. Therefore, he would submit that the present impugned action by the first respondent cannot stand the test of judicial scrutiny and therefore, the same is liable to be quashed.

11. Although, notice has been served on the fourth respondent and his name is printed in the cause list, there is no representation on his behalf and he is also not present.

12. This Court, upon consideration of the rival submissions of the learned counsels and upon perusing the materials and pleadings thereof, is of the considered view that the vacancies which were admittedly arose during the year 2007-08 are not required to be filled up by applying special reservation for Arunthathiyar within Scheduled Caste community since the

rules were amended admittedly only vide G.O.Ms.No.55 Personnel and Administrative Reforms (S) Department dated 08.04.2010 and the Rules clearly stipulate that the reservation shall be applied only to the vacancies which arise after 29.04.2009. In the face of such clear position, this Court does not find any hesitation in holding that the appointment of the fourth respondent in preference to the claim of the petitioner as Assistant Geologist in Geology and Mining Department is illegal and contrary to the Government Orders and beyond the contents of the Notification dated 17.02.2010. It is seen that both the petitioner and the fourth respondent belong to Scheduled Caste community and admittedly the petitioner has secured much higher marks than the fourth respondent. Moreover, the learned counsel for the first respondent is unable to show any other provision as to how the person with lower marks can be preferred against the persons with the higher marks when they belong to the same community. This Court is also conscious of the fact that Arunthathiyar enjoys the special reservation within the Scheduled Caste

community but however such reservation can be applied only after 29.04.2009 and not for the vacancies which arose in 2007-08.

13. In the light of the above discussion and the narrative, this Court finds merit in the contention put forth by the learned counsel appearing for the petitioner. In the said circumstances, the impugned orders are set aside and respondents 1 to 3 are directed to accommodate the petitioner as Assistant Geologist in Geology and Mining Department and grant him all attendant and consequential benefits. The competent authorities are also directed to expedite the possibility of accommodating the petitioner without disturbing the fourth respondent. In case, there is no such possibility, the above direction shall be complied with. The entire exercise shall be initiated and completed by the competent authorities within a period of two months from the date of receipt of a copy of this order.

14. The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.”

4. As against above order, the present Review Petition has been filed by the TNPSC.

5. Before the filing of the Review Petition, a Contempt Petition was filed by the writ petitioner for non-implementation of the order passed by this Court dated 07.08.2018 and when a notice was ordered therein, the present Review Petition has been moved.

6. Ms.C.N.G.Niraimathi, learned standing counsel for the review petitioner/TNPSC would submit that while passing the direction as referred to above, this Court has overlooked crucial fact that the Notification for the subject recruitment was issued on 17.02.2010, by which date, the amended Rules had already come into force on 27.05.2009. Therefore, the amended Rules were followed while filling up the posts. According to the learned counsel, this Court has overlooked the said fact and allowed the Writ Petition in favour of the writ petitioner in respect of the vacancy which was sought to be filled up relating to the year 2007-08.

7. The learned counsel appearing for the review petitioner takes this Court to the contents of the Notification. At this stage, the learned counsel appearing for the writ petitioner would strongly object to the manner in which, the Review Petition has been filed and would submit that a notice was ordered to the TNPSC in response to the contempt petition and in order to avoid contempt proceedings and being admonished by this Court, the present Review Petition has been moved only with a view to re-argue the case and no fresh materials have been filed in support of the Review Petition. The learned counsel for the writ petitioner would also submit that the grounds on which the Review Petition has been filed were in fact, the subject matter of consideration before this Court while issuing the direction by this Court in the Writ Petition. Therefore, he would submit that the Review petition filed by the review petitioner is nothing but an abuse of process of the Court and also not maintainable.

8. The learned counsel for the writ petitioner would also submit that the 4th respondent against whom the writ petition

was filed by the writ petitioner seeking parity to the subject appointment, aggrieved by the order passed by this Court, preferred a Writ Appeal in W.A.No.2001 of 2019, wherein, a Division Bench of this Court, while disposing the appeal vide judgment dated 02.07.2019, has observed in paragraphs 2 to 5 as under:

“1.

2. The learned counsel for the appellant submitted that the appellant would be satisfied in case the order is clarified to the effect that, accommodating the first respondent in the post of Assistant Geologist in the Geology and Mining Department, would not affect his seniority.

3. The learned counsel for the first respondent, on instructions, submitted that he is only seeking parity and he would not claim seniority over the appellant. The said statement is recorded.

4. The only apprehension expressed by the appellant appears to be the possible challenge to his seniority. The learned Single Judge has already explained the position that

promotion should be given to the first respondent, without disturbing the appellant herein. Now that the first respondent himself has given an undertaking that he would not challenge the seniority of the appellant, there is no need to interfere with the order passed by the learned Single Judge. The order passed by the learned Single Judge dated 07.08.2017 in W.P.No.23046 of 2014 is clarified to the above effect.

5. The writ appeal is disposed of with the above clarification. No costs. Consequently, connected miscellaneous petition is closed.”

9. Once the learned Division Bench of this Court has confirmed the order passed by this Court, the question of reviewing the order passed by this Court at the instance of the TNPSC, does not arise at all.

10. The learned standing counsel for TNPSC would submit that she is not aware of the Writ Appeal filed by the 4th respondent herein.

11. Considered the submissions made by the learned standing counsel for TNPSC and also advanced by the writ petitioner.

12. As rightly contended by the learned counsel for the writ petitioner that the review petitioner, under the guise of seeking review of the order passed by this Court on 07.08.2017, was attempting to re-argue the case on the ground that the Notification in respect of recruitment was issued only in February 2010 and therefore, the amended Rules were followed which came into effect in 2009 itself. In fact, as could be seen from the order passed by this Court in the Writ Petition, the same arguments were advanced by the learned standing counsel appearing for TNPSC and that were considered in detail by this Court, but discountenanced by this Court and finally, the directions were issued to accommodate the writ petitioner as Assistant Geologist in Geology and Mining Department. The only point of dispute as between the writ petitioner and the 4th respondent was a matter of settlement of seniority *inter se* between them. The

issue of seniority also came to be settled by the Division Bench of this Court wherein, the writ petitioner had given up his right to claim seniority over the 4th respondent in which event, the disposal of Writ Appeal in W.A.No.2001 of 2019 has confirmed the directions passed by this Court in the Writ Petition. When Writ Appeal as against the direction passed by this Court has been disposed of without upsetting the directions issued by this Court in the Writ Petition, such directions of this Court need not be reviewed at all at the instance of the TNPSC. Moreover, the grounds on which the Review Petition has been filed, were not new grounds and the same were part of the Writ Petition and were considered while passing the directions by this Court in the Writ Petition.

13. This Court finds that under the guise of seeking review, the learned standing counsel for TNPSC is attempting to re-argue the matter afresh on the same set of grounds which were already dealt with and considered by this Court. In any event, the scope of Order 47 Rule 1 CPC which

provides for review, is not available for the review petitioner seeking to re-argue the matter. Unless there is error apparent on the face of the record or clinching material which was already in existence, but could not be unearthed during the pendency of the Writ Petition and the same is now available with the review petitioner, the Court cannot be called upon to review its own order. This Court does not find any error apparent on the face of the record as the Writ Petition is decided on merits by considering all the materials and pleadings placed on record. As rightly contended by the learned counsel for the writ petitioner, the review petition has been filed as ploy to avoid any contempt action being taken against the TNPSC. In the circumstances, this Court is of the view that the present Review Petition is beyond the scope of Order 47 Rule 1 CPC and therefore, the same need not be entertained. Therefore, this Court finds that the Review petition is completely devoid of merit and substance.

14. Accordingly, the Review Petition fails and the same is dismissed. No costs.

Suk

12-12-2019

To

- 1.The Commissioner,
Department of Geology and Mining,
Industrial Estate, Guindy,
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- 2.The Secretary to Government,
Public Works Department,
Secretariat, Chennai - 9.
- 3.The Secretary to Government,
Department of Geology and Mining,
Secretariat, Chennai - 9.



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V.PARTHIBAN, J.

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Order in
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