

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.07.2019

Delivered on : 01.08.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.No.14440 of 2018

and

W.M.P.No.17052 of 2018

E.Rajeswari Petitioner
vs.

1.Tamil nadu Public Service Commission,
Rep by its Secretary,
Frazer Bridge Road,
V.O.C.Nagar, Chennai - 3.

2.The Commissioner,
Hindu Religious & Charitable Endowment
Department,
Nungambakkam, Chennai - 34.

..... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the first respondent under Memo 6808/OTD-C3/2012 dated 04.05.2018 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to appoint the petitioner as Assistant Commissioner Hindu Religious & Charitable Endowment Department for the vacancy that arose in the year 2011-12.

For Petitioner .. Mr.V.Raghavachari

For Respondents .. Mr.M.Loganathan, S.C. for R1

Mr.M.Maharaja, Spl. G.P. for R2

ORDER

The first respondent issued Notification No.2 of 2013, calling for eligible candidates for appointment to the post of Assistant Commissioner and Executive Officer Grade-I in HR & CE Department, on 21.02.2013, for the vacancies 2011-12. The petitioner, who belongs to Scheduled Caste

Community, applied in response to the Notification, for consideration of her candidature, in one of the four vacancies, for appointment to the post of Assistant Commissioner, which was earmarked for SC Category. Totally, four vacancies were notified for the post of Assistant Commissioner, HR & CE. In the written examination conducted, the petitioner participated and secured 537.50 marks. According to the petitioner, the marks secured by her was much higher than the OBC candidates participated in the examination. Above the petitioner, another Scheduled Caste candidate has secured 620 marks and therefore, he was provisionally selected for appointment and the petitioner learnt that she being the second best SC candidate, her name was put in the wait list.

2.The other Scheduled Caste candidate viz., Shri.A.Ramesh was provisionally selected in the vacancy 2011-12. His selection was subsequently canceled on 09.12.2015 for the reason that he has suppressed information which attracted disqualification in terms of the Notification issued by the first respondent/Commissioner. His appointment was canceled on 09.12.2015 and the said A.Ramesh had approached this Court in W.P.No.32801 of 2015 challenging the cancellation. In the said circumstances, the petitioner was under bona fide impression that she would be appointed in the vacancy earmarked for SC candidate, as she was the first SC candidate put on the wait list.

3.In the meanwhile, it appears that the first respondent issued another Notification in Notification No.20 of 2013, inviting applications for appointment to the post of Assistant Commissioner for the year 2012-13, on 19.12.2013 i.e., immediately following the Notification dated 21.02.2013 for 2011-12. Infact, it appeared that both the selection processes were simultaneously conducted overlapping each other and even in that selection, the petitioner was put in the wait list as No.1 candidate. Infact, the final result of the vacancy for the year 2011-12 was only concluded in September, 2014 and on the heels of the results being published for 2011-12 in September, 2014, the results of the second Notification was also published in October, 2014. However, admittedly, the Schedule Caste vacancy for the year 2011-12 was not included in the subsequent Notification of the year 2012-13. This Court has granted interim orders while entertaining the writ petition filed by the said A.Ramesh, the SC candidate, who was selected against the 2011-12 vacancy. Ultimately, the writ petition came to be dismissed by this Court on 21.03.2018.

4. When a representation was made for appointment of the petitioner in the vacancy, which arose due to disqualification of the said Shri.A.Ramesh, on the basis of the petitioner's name figuring in "reserve list", the first respondent issued a communication dated 04.05.2018 rejecting the claim of the petitioner stating that her request cannot be complied with. According to the said communication, supplementary selection could not be made for the vacancy caused due to cancellation of provisional selection of Mr.A.Ramesh. The said communication is put to challenge in the present writ petition.

5. Thiru.V.Raghavachari, the learned counsel appearing for the petitioner would submit that the petitioner ought to have been automatically appointed on the basis of her name finding a place in the "reserve result", since, it is incumbent upon the Commission to maintain a wait list in case of any vacancy arising due to disqualification of any selected candidate or non joining of any candidate and the vacancy can be filled up only from the "reserve list" to be maintained by the Commission. In fact, the learned counsel would submit that in the subsequent selection also the petitioner's name was put on the "reserve list". However, she could not stake any claim for appointment in the subsequent Notification issued for the year 2012-13, as there was no vacancy available, unlike for the year 2011-12, when the appointment of Mr.A.Ramesh was canceled and his challenge to the cancellation was also dismissed by this Court.

6. On notice being issued to the first respondent, Mr.M.Loganathan, learned Standing Counsel entered appearance for the first respondent and Mr.M.Maharaja, learned Special Government Pleader entered appearance for the second respondent and counter affidavit has also been filed.

7. In the counter affidavit, it is stated that the selection for appointment of Assistant Commissioner, in regard to the vacancy for the year 2011-12, was concluded on 17.09.2014 by way of counseling and no "reserve list" had been drawn up for the said recruitment. In the absence of any "reserve list" maintained by the Commission in regard to the subject selection, the question of appointing the petitioner in the vacancy, which arose due to cancellation of appointment of Mr.A.Ramesh, does not arise. According to the counter affidavit, as regards the said selection/appointment, the same was completed by adopting counseling method, as was the practice in vogue. The

learned counsel appearing for the Commission would reiterate the above facts during his oral submissions.

8. However, it is admitted that in respect of the second recruitment, pursuant to Notification No.20/2013 for the year 2012-13, a "reserve list" was maintained, in which the petitioner's name figured as No.1 SC Candidate. However, on being confronted by this Court as to why such "reserve list" was not maintained for the earlier recruitment for the year 2011-12, except stating that the recruitment was completed by adopting counseling method, no other explanation was forthcoming from the counsel appearing for the Tamil Nadu Public Service Commission. The learned counsel would rely on the Rule of procedure followed by the Commission. But however, this Court is unable to comprehend as to what was the Rule of procedure which was peculiarly adopted in that selection alone. Unfortunately, this Court is not inspired by any submission in that regard by the learned counsel for the Commission.

9. At this, Mr.V.Raghavachari, the learned counsel appearing for the petitioner would submit that it is mandatory to maintain "reserve list" as per Section 15-A of Tamil Nadu State and Subordinate Service Rules, which is replaced by Tamil Nadu Government Servants (Conditions of Service) Act, 2016, wherein Section 3(u) and Section 27(f) of the Act, deal with 'reserve list' and 'operation of reserve list', respectively, which are extracted in the counter affidavit filed by the Commission as under;

"3(u) "Reserve List" means 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 be in force until the regular list is drawn up subsequently.";

Section 27-f Provided also that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes/Denotified Communities, Backward Classed, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is canceled for any reason, a candidate in his place shall be appointed from the respective category and in accordance with the ranking from the reserve list"

10.The learned counsel for the petitioner would therefore submit that it is imperative on the part of the Commission to maintain such "reserve list" and it is strange that the Commission has come up with the present objection stating that they did not maintain any "reserve list" only for the recruitment of the vacancies notified for the years 2011-12. The learned counsel would therefore submit that this Court may consider the accommodation of the petitioner in the vacancy caused due to disqualification of the said Shri.A.Ramesh, since, admittedly the petitioner is the next Scheduled Caste candidate available in the said selection for appointment as Assistant Commissioner, HR & CE Department. According to him, in view of the non-maintenance of "reserve list", a valuable right of the petitioner is lost and her appointment in Government service stood negated by adoption of wrong procedure by the Service Commission or by not following the Tamil Nadu Government Servants (Conditions of Service) Act, 2016.

11.On being questioned about the status of the petitioner in the subject recruitment, it is not in dispute that the petitioner secured the second best mark in the selection, after the other SC candidate Shri.A.Ramesh, who was ultimately disqualified from being appointed. Therefore, there is not doubt regarding the petitioner's eligibility and qualification for consideration of her name for appointment to the post of Assistant Commissioner, HR and CE. The only legal objection which could have some force is that the Commission, for some strange reasons, did not maintain any "reserve list" for the year 2011-12. Infact, even in the subsequent selection for the year 2012-13, a "reserve list" was maintained and the name of the petitioner herein had figured.

12.Therefore, in all fairness, this Court has to extend its helping hand to a person like the petitioner, who belongs to down trodden community, viz., SC community, when she happened to be a meritorious candidate, having secured more than the cut off mark even with regard to the other candidates from other communities. The non-maintenance of "reserve list" by the Commission for the subject recruitment was entirely, the fault of the Commission and in any event, the fact of the matter is that the petitioner is the second best SC candidate, who came out successful in the selection/recruitment for the vacancies of the year 2011-12. By virtue of her being the second best candidate, the petitioner is automatically entitled to be considered for appointment against the SC vacancy, when the candidate,

who was already selected above her, came to be ultimately disqualified and his appointment was canceled and challenge to such cancellation was also dismissed by this Court.

13. Infact, during the course of arguments, the learned counsel appearing for Tamil Nadu Public Service Commission would submit that as per instructions, once, the second Notification was advertised for the year 2012-13, the wait list maintained in the earlier selection would automatically get lapsed. This was objected to by the learned counsel for the petitioner stating that, that would arise only when the unfilled vacancies of the previous selection were included in the subsequent Notification. As far as the present case on hand, the vacancy ear-marked for SC candidate did not lapse at all in view of pendency of Writ Petition in W.P.No.32810 of 2018 filed by the disqualified candidate Shri.A.Ramesh and ultimately, the writ petition was dismissed only on 21.03.2018. Even otherwise, the learned counsel for the petitioner would draw the attention of this Court to communication, which was sent by the Commission, dated 08.06.2018, to the Principal Secretary to Government of Tamil Nadu, in which it is stated that one vacancy ear-marked for SC general category for the year 2011-12 in the post of Assistant Commissioner of HR & CE (Administration) may be added to the future estimate of vacancy. This communication would show that the said vacancy had not been filled up or notified in the subsequent Notification. Therefore, this Court is of the view that the contention of the learned counsel appearing for the Commission that in view of the subsequent Notification No.20 of 2013, any vacancy of the previous recruitment would lapse, is unacceptable and such arguments are without any merit and the same are liable to be rejected outright.

14. Infact, the learned counsel for the Commission further added that the vacancy has been ultimately surrendered to the Government and therefore, the question of selection of the petitioner now does not arise. This Court once again is unable to appreciate the action of the first respondent/Commission for the reason that the issue of disqualification was under consideration before this Court and ultimately this Court dismissed the writ petition filed by the disqualified candidate viz., Shri.A.Ramesh, only on 21.03.2018. Infact, when the petitioner approached the Commission earlier, she was informed that because of the pendency of the litigation, her request could not be acceded to and therefore, now it does not lie in the mouth of the Commission to simply reject the claim of the petitioner on such reasoning. The Commission having

violated the provisions of the Tamil Nadu State Government Servants (Conditions of Service) Act, 2016 which was replacement of Tamil Nadu State Sub-Ordinate Service Rules, which mandated the maintenance of "reserve list" and such "reserve list" was maintained infact for the subsequent selection of the year 2012-13, it was quite strange that for the subject recruitment alone, the Commission failed to maintain the "reserve list".

15.The clarification given by the Commission that the subject recruitment was finally concluded by counseling method appears to be not a valid clarification, since this Court is unable to comprehend as to the basis for such conclusion of the recruitment by counseling method. This Court is not impressed by any clarification by the Commission in this regard as no supporting materials have been produced in order to substantiate the said clarification.

16.On the other hand, the petitioner who has duly participated in the recruitment, pursuant to Notification No.2 of 2013, and having duly secured sufficient marks for considering her candidature against SC category, the denial of appointment to her as Assistant Commissioner of HR & CE Department, even though the selected SC candidate above the petitioner was ultimately found disqualified and her selection stood canceled, is patently arbitrary, unreasonable and cannot stand the test of judicial scrutiny. Infact, when the petitioner made a request for consideration of her appointment in the subsequent selection for the year 2012-13, when admittedly a "reserve list" was maintained, she was informed by the Commission, vide communication dated 06.07.2017, that the vacancies notified were already filled up. When such stand was taken by the Commission in regard to the subsequent Notification, conversely the Commission ought to have accepted the request of the petitioner to select her for appointment when the vacancy ear-marked for SC was very much available.

17.This Court is unable to countenance the argument that there was no "reserve list" maintained by the Commission. Even, in the absence of the same, in view of the above narrative, this Court declares that the petitioner is deemed to have been included in the "reserve list", as admittedly, she is the second best SC candidate came out successful in the subject selection.

18.For the above said reasons, the writ petition is allowed and the order of the first respondent under Memo No.6808/OTD-C3/2012, dated 04.05.2018, is hereby set aside

and the respondents are directed to select the petitioner as Assistant Commissioner, HR & CE Department, for the vacancy arose in the year 2011-12, ear-marked for SC candidate and in the vacancy caused by the cancellation of originally selected candidate Shri.A.Ramesh and forward the name to the Government for her appointment as Assistant Commissioner, HR & CE. The petitioner, on such selection and appointment is also entitled to all attendant benefits except for the salary and allowances for the period in question, as she has not shouldered any responsibility for the post in which she is now ordered to be appointed. The respondents are directed to pass appropriate orders in complying with this direction within a period of eight weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

Dated: 28.08.2019

*** Corrected order
to be issued;**

sd/- Sub Assistant Registrar

Dated: 01.11.2019

//True Copy//

Sub Assistant Registrar

msh/mrm

To

1.The Secretary,
Tamil nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar, Chennai - 3.

To be substituted
to the order
already despatched
on 18.10.2019

2.The Commissioner,
Hindu Religious & Charitable Endowment
Department,
Nungambakkam, Chennai - 34.

+1cc to Mr.v.Raghavachari , Advocate SR.No.65717

+1 cc to Spl Government Pleader(HR&CE) Sr.No. 66456

W.P.No. 14440 of 2018

NR(CO)

A.SK(05/09/2019)

SP(01/11/2019)