



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.04.2019

Delivered on : 29.04.2019

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CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.[MD]No.10797 of 2017

and

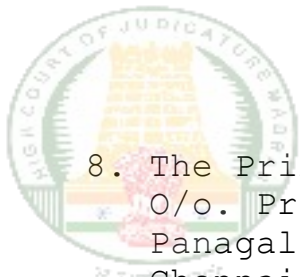
W.M.P. (MD) Nos.8217, 8218/2017, 7802/2018 and 2052/2019

Paramanandam

: Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. by its Chief Secretary,
Secretariat, Fort St. George,
Chennai-600 009.
[R-1 is deleted vide order of this Court
dated 27.02.2019 in W.M.P. (MD) No.5366/2018]
2. The Director,
Directorate of Public Health and Preventive Medicine,
No.359, Anna Salai,
Chennai-600 006.
3. The Commissioner of Treasuries and Accounts,
O/o. The Commissioner of Treasuries and Accounts,
571, Anna Salai, Nandanam,
Chennai-600 035.
4. The Commissioner of Commercial Taxes,
O/o. the Commissioner of Commercial Taxes,
Chennai-600 006.
5. The Director,
NCC Directorate (TN P&AN),
State Cell, Chennai-600 009.
6. The Inspector General of Registration,
O/o. the Inspector General of Registration,
100, Santhome High Road, Chennai-600 028.
7. The Chief Engineer,
State Highway Department,
HRS Complex, 76, Sardar Patel Road,
Guindy, Chennai-600 025.



8. The Principal Chief Conservator of Forest,
O/o. Principal Chief Conservator of Forest,
Panagal Maligai, Saidapet,
Chennai-600 015.

9. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
V.O.C.Nagar,
Chennai-600 003.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the ninth respondent herein to appoint the petitioner in appropriate post for the vacancies that have arisen due to non-joining/joining and leaving of selected candidates in pursuance of Notification No.1/2014, dated 06.02.2014 and Supplement Notification No.9/2014 dated 16.04.2014 issued by the ninth respondent.

For Petitioner : Mr.G.Prabhu Rajadurai
For Mr.K.N.Govardhanan
For Respondents 2to8 : Mrs.J.Padmavathy Devi,
Special Government Pleader
For Respondent No.9 : Mr.K.K.Senthil

ORDER

The prayer in the present Writ Petition is to direct the ninth respondent herein to appoint the petitioner in an appropriate post for the vacancies, which arose due to non-joining/joining and leaving of selected candidates in pursuance of Notification No.1/2014, dated 06.02.2014 and Supplementary Notification No.9/2014 dated 16.04.2014 issued by the ninth respondent.

2. According to the petitioner, he belongs to S.C. Community. The ninth respondent, vide Notification No.1/2014, dated 06.02.2014, invited applications for admission to written examination for direct recruitment against the vacancies for the year 2013-2014 for the post of Assistants and Personal Clerk in various departments of the Tamil Nadu Government, which are included in Combined Civil Services Examination-II (Non-interview Posts) (Group-II-A Services) (Service Code No.004). The total number of vacancies is 2,269 and the major vacancies are from the department of the respondents 2 to 8 herein. The ninth respondent issued a supplementary notification bearing No.9/2014, dated 16.04.2014 to the above said Notification No.1/2014, dated



06.02.2014. Pursuant to the same, the petitioner applied for the written examination and was issued with a hall ticket, based on which, he appeared for the written examination held on 29.06.2014 at Thanjavur Centre.

3. It is the further case of the petitioner that the ninth respondent published a list of register numbers of the candidates who have been selected provisionally for II Phase of Certificate Verification, in which, the petitioner's register number was found place, but, he has not been appointed in any post. Thereafter, his register number was also found in the list of candidates published by the ninth respondent who were provisionally admitted for appointment for the above recruitment, V-Phase of Certificate verification and counselling. Based on the same, the petitioner was called for by Memorandum No.1173/PSD-C1/2014, dated 06.06.2016, for V Phase Certificate verification and counselling. Only 3 candidates from SC category were called for in that counselling for a single Assistant post. The petitioner is only an undergraduate. Since another candidate possessed Postgraduate degree, the said post was offered to him and the petitioner was orally informed that he will be again called for to fill up the remaining vacancy. But, he was not yet called for by the ninth respondent.

4. It is also stated by the petitioner that as per the information obtained from the ninth respondent through the Right To Information Act, 2005, out of total vacancies of 2846 published in Notification No.1/2014, dated 06.02.2014 and supplement Notification No.9/2014, dated 16.04.2014, 64 vacancies were reduced for want of approval by the TNPSC and hence, the total vacancies would be 2782, out of which, 15% have to be given as reservation for Scheduled Caste (General). As such, the vacancies to be reserved for Scheduled Caste (General) is 417, whereas, as per the information furnished by the ninth respondent, only 408 vacancies were allotted to Scheduled Caste. Thus, there are 9 more vacancies to be given to Scheduled Caste as reservation.

5. It is the plea of the petitioner that even after counselling conducted by the ninth respondent, many number of vacancies arose due to joining and leaving/non-joining of candidates, who have been selected pursuant to the notification and these vacancies would naturally be given to the persons who are in the next merit list. Since the petitioner was one among the three persons called for V Phase of Counselling for SC candidates and he would be in the next place in the merit list, he is entitled to get appointment for the vacancies arisen due to joining and leaving / non-joining of SC candidates who have been selected pursuant to the notification. Hence, he sent a ~~separate representation~~ to the ninth respondent seeking appointment to the vacancies arose due to non-joining/joining and left by the selected candidates, but, so far, the same has not been



considered. Having left with no other option, the petitioner is before this Court and prays for appropriate relief.

6. Mr.G.Prabhu Rajadurai, learned counsel for the petitioner submitted that the publication of reserve list is a *sine qua non* and a mandate is prescribed in Rule 15-A of the Tamil Nadu State and Subordinate Service Rules. However, the TNPSC has not published the reserve list, as a result of which, the petitioner, though being qualified and entitled to be given appointment, has not been called for till date. The learned counsel also brought to the notice of this Court the information obtained by the petitioner through RTI, in which, the petitioner came to know that there are about 235 vacancies in the offices of the respondents 2 to 8 due to non-joining/joining and left by the selected candidates. If such information is furnished by all the departments, like that of the respondents 2 to 8, the vacancies may exceed to 500 and in such an event, the petitioner will surely get appointment, due to the fact that he was one among the three SC candidates lastly called for a single post of Assistant.

7. Lastly, it is contended that the TNPSC is duty bound to sponsor all the candidates who passed examination in the post that fell vacant due to non-joining/left candidates and hence, narrating the details, the learned counsel sought for appropriate directions.

8. The learned Special Government Pleader appearing on behalf of the respondents 2 to 8, by referring to the counter-affidavit filed by the fourth respondent, submitted that the process of selection of candidates for appointment in Government Department is conducted by the TNPSC and, therefore, the TNPSC will complete the entire selection process and issue allotment orders to the persons for appointment to each department. Only in the case where TNPSC allots a particular candidate to Commercial Taxes Department, after completing the selection process, the said Commercial Taxes Department will act upon the same and appoint the said candidate in that post. Thus, the learned Special Government Pleader appearing on behalf of the respondents 2 to 8, justified the process of counselling and selection.

9. Controverting the submissions made by the learned counsel for the petitioner, Mr.K.K.Senthil, learned Standing Counsel appearing on behalf of the ninth respondent, relying upon the counter-affidavit filed, contended that the petitioner applied for the post of Assistant/Personal Clerk included in Group-II A Services recruitment (2013-2014) (non-interview posts). He had secured 213 marks in the said examination. He belongs to SC communal category and his communal rank is 626 and his overall rank is 577. As per his mark and educational qualification, he was called for 2nd Phase of certificate verification -cum-counselling under SC(G) category for the post of Assistant in the



ratio of 1:2. Before he reaches his turn, the vacancy in SC(G) category got exhausted and as there is no vacancy, he has not been selected. The same was also informed to him on the same day of counselling.

10. It is also submitted by the learned Standing Counsel for the ninth respondent that at the end of V Phase of certificate verification -cum- counselling, the only one vacancy meant for SC (Ex) PSTM could not be filled up from that category due to paucity of SC-Ex-serviceman PSTM candidates in the entire rank list. Hence, the vacancy has to be filled up from SC(G) PSTM category as per the Rules and, therefore, candidates were called for in the ratio of 1:3. The petitioner's candidature stood third among them against one vacancy. The first candidate, viz., M.Mathiyazhagan, who possessed PG qualification and obtained 213 marks, was selected. Thus, the second and third candidates could not be selected, as there were no further vacancies in that category.

11. It is also stated by the learned Standing Counsel for the ninth respondent that initially, 2269 vacancies were notified for the post of Assistant and Personal Clerk in the recruitment and some departments/Units had modified their vacancies subsequently and at the time of counselling, totally, 2787 vacancies were available in the post of Assistant and Personal Clerk in various departments. Totally, five phases of certificate verification -cum- counselling were conducted to fill up 2787 vacancies and all the vacancies have been filled up by the eligible candidates.

12. It is further submitted that for the post of Assistant, 408 SC candidates have been selected among 2690 candidates and for the post of Personal Clerk, 13 SC candidates have been selected among 97 candidates and totally, 421 SC candidates were selected and allotted to various departments/Units through the said recruitment by following the Rule of reservation.

13. Lastly, it is contended by the learned Standing Counsel for the ninth respondent that after completion of this recruitment, the next Group IIA for the years 2014-2015 and 2015-2016 recruitment was notified on 12.10.2015 and the result had also been published and 2 phases of selection through counselling were also conducted and the candidates have joined duty. Once the select list is drawn for the subsequent recruitment, the reserve list/rank list of not selected candidates in the previous recruitment gets lapsed automatically. Hence, the joined and left and not-joined vacancies of the previous recruitment could not be taken into account for allotment of the already selected candidates at present. In support of his contention, he has relied



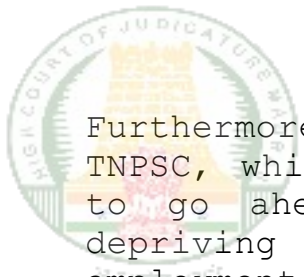
14. I have considered the submissions made on either side and perused the materials available on record.

15. Admittedly, the petitioner belongs to Scheduled Caste community and he is a graduate and eligible to join Group II A service in Tamil Nadu Government.

16. The TNPSC published Notification No.1/2014, dated 06.02.2014 calling for applications against the 2269 vacancies for the year 2013-2014 for the post of Assistants and Personal Clerk in various departments of Tamil Nadu Government through combined Civil Services Examination-II (Non interview) Post (Group II A services) and the petitioner applied for the same and attended the examination and succeeded in it and was called for certificate verification. In the second phase of certificate verification, though the petitioner's register number was included, he was not selected. In the V Phase of certificate verification, the petitioner's name was found place along with two other candidates. Though he attended the same, he was not selected. According to the petitioner, for the I phase, 2400 candidates were invited on the basis of their rank and thereafter, for the next four phases, the candidates were invited in the ratio of 1:3 and the total number of vacancies for SC is 408.

17. It is pertinent to mention here that the information obtained by the petitioner as well as one Sathishkumar under the Right to Information Act would reveal that there are lot of vacancies to be filled up including the SC category, due to joining and leaving/non-joining of candidates who have been selected. When such being the position, as per Rule 15-A of the Tamil Nadu State and Subordinate Service Rules, reserve list should be published by TNPSC containing not less than 25% of the candidates of each group including General Turn in the regular list, whereas, in this case, the TNPSC has not even published the reserve list, instead, published the notification for fresh recruitment, which resulted in denial of appointment to the petitioner, though he took part in the earlier selection process and was called for thrice.

18. It is apparent from the records that several selected candidates either did not join the post or they abandoned the post, after joining. In such circumstances, the TNPSC ought to have published the list as per Rule 15-A and given preference to the candidates, who are in the reserve list and thereafter, proceed with the process of notification by calling for fresh recruitment. If that is done, the candidates in the reserve list would be joining employment, as they had already undergone the battle of selection process, certificate verification, etc.



Furthermore, their age factor has also to be taken note of by the TNPSC, while calling for fresh recruitment. If the TNPSC chooses to go ahead with the fresh recruitment, it would amount to depriving the right of the reserve list candidates from getting employment.

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19. At this juncture, it is useful to rely upon the order passed by this Court in Contempt Petition No.182 of 2015 in W.P.No.10218 of 2014, dated 27.03.2015 [C.Raman vs. Mr.M.Vijayakumar, Secretary, Tamil Nadu Public Service Commission], wherein, at Paragraph No.15, it is observed as under:

"15. I have considered the said submission. As already pointed out, the legal fight by these poor candidates has been going on from 2012 onwards, commencing from W.P. No. 15742 of 2012. As already narrated number of writ petitions were filed, number of interim orders were passed and number of final orders were also passed, issuing specific direction to the TNPSC to operate the Reserve List. But the TNPSC has miserably (I am not inclined to call it as a wanton action) failed to follow the rules and the directions of this Court. Despite several orders passed and despite the last order in W.P. No. 10218 of 2014, it is not understood as to why the TNPSC did not obey the directions. This resulted in multiplicity of litigations wasting the time and money of these candidates. Eventually, though they have succeeded in the legal battle and secured employment, they have lost salary for at least three years and other incidental benefits. The TNPSC which is a constitutional functionary should conduct itself as a role model for the other Governmental Organisations in respecting the system under which the country is marching forward. The constitution and the people expect mutual respect for each other among the various wings of the Government. Unfortunately in this case, it is painful to say that the TNPSC had shown reluctance; if not indifference, to obey the directions of this court. But for this contempt petition, I am sure, the TNPSC, would not have operated the reserve list in full. Had the petitioner herein [a lone candidate] been given employment, this petition would not have been filed in which event 81 candidates who have got employment now would not have been appointed. The Hon'ble Supreme Court in Arundhati Rai's contempt case has expressed its concern in the following words: The foundation of the judiciary is the trust and the confidence of the people in its ability to deliver fearless and impartial justice. When the said foundation is shaken by acts which tends to create disaffection and disrespect for the authority of the court by creating distrust in its working, the



edifice of the judicial system gets eroded. In the light of the above observation of the Hon'ble Supreme Court, I have to say, Rule of Law which is the foundation of governance needs to be respected and followed unflinchingly. A constitutional functionary is no exception. If courts' orders are not obeyed by the other wings of the Government, it is a threat to the Rule of Law. Obeying the judicial orders of the courts reflects the discipline of the orderly civilized society. In the instant case, going by the long legal battle, going by the repeated violations of the order of this Court and all the other circumstances, it may be concluded that the respondent has committed serious contempt, warranting him to face the legal consequences. But taking a very compassionate and generous view and accepting the assurance given by the learned Additional Advocate General that the TNPSC, will follow the rules and obey the orders of this Court without any dereliction in future, so as to serve the people of this country in the way in which they are required to function, I am inclined to discharge the contemnor. I only wish that this Court may not have yet another unfortunate occasion in future to deal with a similar contempt petition against the TNPSC. The contemnor in the affidavit has also tendered his unconditional apology which in my view is sincere and unconditional."

20. It is worthwhile to refer to an order passed by this Court dated 25.01.2019, in W.P.(MD)Nos.15009 of 2016 and 25168 of 2018 [Anbarasan v. The Secretary to Government], in and by which, at Paragraph Nos.10 and 11, this Court held as under:

"10. This is not for the first time that such situation has arisen. Even earlier in the selection process held in the year 2009-11, a similar situation arose and writ petitions were filed by the non-appointed candidates in W.P.No.10218 of 2014 dated 17.06.2014. A learned single Judge of this Court after examining the entire issue in detail had squarely blamed the Government for the present scenario. The TNPSC was also faulted for not informing the Government about the non receipt of the vacancy position before it is carried out. While doing so, the learned Judge has observed as follows:-

"17. From the submissions made by the learned counsel on either side and from the pleadings placed before this Court, it is crystal clear that as per Rule 15-A of the Tamil Nadu State and Subordinate Service Rules, Reserve List will be valid until the Regular List



is drawn up subsequently. For better understanding, Rule 15-A is extracted hereunder:-

(15-A) Reserve List - ".Reserve List". shall mean 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."

18. In this case, the result of the examination (vide Advertisement for the year 2009-2011) was published on 19.07.2011 and 13.09.2011 for general and shortfall respectively. As per Rule 15-A, the Reserve List should be in operation until the next regular list is drawn. From the submission made before this Court in earlier writ petition, it is crystal clear that many of the vacancies which remained unfilled were filled up by operating the Reserve List. But vacancy position was not ascertained by the TNPSC from the Government and as a result, the Reserve List was not fully operated.

19. Though it is submitted by the learned Senior Counsel for TNPSC that the Commission was not at fault, I find that to some extent TNPSC is to be blamed for not having addressed to the Government, calling for the vacancy position so as to operate the Reserve List. Instead, TNPSC had addressed to the District Collectors individually to send the vacancy caused due to non joining of candidates or candidates joining and leaving the job in the respective district.

Unfortunately, the District Collectors did not respond to the letter of the TNPSC. I am really surprised as to how the District Collectors, who are supposed to be very responsible, could omit to respond to the letter of the TNPSC to inform the vacancy position. The District Collectors concerned did not even inform the Government about the communication from the TNPSC. Thus, the Government was kept in dark. The Government was informed of only belatedly after the last order passed by this Court in earlier writ petition. The Government, thereafter, collected the vacancy particulars and forwarded the same to TNPSC. Now, the TNPSC claims that it is not in a position to operate the Reserve List, because, by the time when it received the vacancy position from the Government, subsequent regular list had already been drawn up on 03.01.2013 for the year 2012-2013. There can be no controversy before this Court



that till 03.01.2013, Reserve List was in operation and the same should have been operated. The same was not operated by the TNPSC to fill up those vacancies, because the TNPSC was not informed of the vacancy position. Though TNPSC blames the District Collectors for not having sent the vacancy position and though the Government claims that the Government was not addressed by the TNPSC, the fact remains that the District Collectors did not respond to the repeated communications from the TNPSC calling for vacancy position. For the fault or default of one or the other of these Governmental organisations, the petitioners cannot be allowed to suffer. Had the vacancy position been given to the TNPSC on time, certainly, the Reserve List would have been operated by the TNPSC. Regarding this position, the learned Senior Counsel for TNPSC is fair to say that the TNPSC could not operate the Reserve List only for want of communication from the Government or from the District Collectors regarding the actual vacancy position. He would fairly submit that if TNPSC had been furnished with the details of the vacancy position, Reserve List would have been operated before 03.01.2013."

11. It appears that realising the situation that had been created by the in-action of the so-called responsible Indian Administrative Service (IAS) Officers concerned, the learned Additional Advocate General and learned counsel for the TNPSC have agreed to operate the reserve list as a one time measure in the said writ petition."

21. Considering the facts and circumstances of the case and also having regard to the dictum laid down by this Court in the cases cited *supra*, this Court is of the view that the TNPSC should follow Rule 15-A and publish the reserve list and fill up such vacancies from the names of the reserve list, in which event, there is every possibility for the candidates, like that of the petitioner herein, to get employment.

22. Thus, taking note of the hurdles faced by the petitioner in the recruitment process and having regard to the fact that since he is reaching the maximum age, his chance of getting job would be bleak, this Court deems it fit to issue appropriate directions to the ninth respondent.

23. Accordingly, the Writ Petition is disposed of with the following directions:-

■ The Tamil Nadu Public Service Commission/R-9 is directed to consider the candidature of the petitioner against the existing vacancies and issue appointment order, if he comes



well within the vacancy limit, pursuant to the notifications dated 06.02.2014 and 16.04.2014.

- It is made clear that the TNPSC, before publication of the next notification, should publish the reserve list, as mandated under Rule 15-A and all the vacancies as per the earlier notification should be filled up.
- It is also made clear that if the present mode continues and if any deviation is found in future, it will be viewed very seriously.
- In view of the order passed above, W.M.P.(MD)Nos. 7802/2018 and 2052/2019, which were filed to delete the name of the sixth respondent and second respondent herein respectively from the array of respondents, are closed.

No costs. Consequently, connected W.M.P.(MD)Nos.8217 and 8218/2017 are also closed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar(CS)

To

1. The Director,
Directorate of Public Health and Preventive Medicine,
No.359, Anna Salai,
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2. The Commissioner of Treasuries and Accounts,
O/o. The Commissioner of Treasuries and Accounts,
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8. The Secretary,
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Frazer Bridge Road,
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Chennai-600 003.

+1 CC to Mr.K.N.GOVARDHANAN, Advocate (SR-64144[F] dated
30/04/2019)

+1 CC to Mr.K.K.SENTHIL, Advocate (SR-64230[F] dated 30/04/2019)

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-64672[F] dated 30/04/2019
)

Order made in
W.P. [MD] No. 10797 of 2017
Delivered on:
29.04.2019

SML

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