



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2019

Judgment Reserved
on:23.10.2019

Common judgment delivered
on: 04.11.2019

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CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) Nos.1225 and 1226 of 2016

and C.M.P. (MD) Nos.11407, 8146 of 2016 and 1810 of 2018 in W.A. (MD)
No.1225 of 2016

and C.M.P. (MD) Nos.11408 of 2016 and 1811 of 2018

against

WP (MD) Nos.5975 & 5976 of 2016

G.Balaji ... Appellant in W.A.(MD) No.1225 of 2016

N.Prasath ... Appellant in W.A.(MD) No.1226 of 2016

-vs-

The Secretary,
Tamil Nadu Public Service Commission,
Fracier Bridge Road,
Next to Dental Hospital,
Chennai.

... Respondent in both the appeals

Writ Appeals filed under Clause 15 of Letters Patent against the common order dated 20.06.2016, made in W.P.(MD) Nos.5975 and 5976 of 2016, on the file of this Court.

Prayer in WP(MD). 5975 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records in respect of the impugned letter vide Memorandum No.6207/OTD/B2/2010 dated 16.9.2014 issued by the Deputy Secretary, Tamil Nadu Public Service Commission, Chennai to quash the same and to issue positive direction to the Respondent Secretary, Tamil Nadu Public Service Commission, Chennai to select the petitioner for appointment as Assistant in interview posts or in Non-Interview Posts included in combined subordinate services Examination I Register No.01015100 (Group-II Services) under General Turn General against the existing vacancies or in reserved 2 seats on 11.2.2014 by this Hon'ble Court or in the vacancies arising due to Non-Joining duty of selected candidates or selected candidates who joined duty but left



thereafter or cancellation of provisional selection of selected candidates for any reasons or drop-out vacancies or with-held vacancies or not filled vacancies under Ex-servicemen General Turn (General) Quota or in any immediate vacancies or in supernumerary post.

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Prayer in WP(MD). 5976 of 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records in respect of the impugned letter vide Memorandum No.6207/OTD-B2/2010 dated 16.09.2014 issued by the Deputy Secretary, TamilNadu Public Service Commission, Chennai to quash the same and to issue positive direction to the Respondent Secretary, TNPSC, Chennai to select the petitioner for appointment as Assistant in Interview Posts or in Non-Interview posts included in combined Subordinate services Examination I Register No.01016263(Group-II Services) under General Turn General against the existing vacancies or in reserved 2 seats on 11.2.2014 by this Hon'ble Court or in the vacancies arising due to Non-Joining duty of selected candidates or selected candidates who joined duty but left thereafter or cancellation of provisional selection of selected candidates for any reasons or drop-out vacancies or with-held vacancies or not filled vacancies under Ex-servicemen General Turn (General) Quota or in any immediate vacancies or in supernumerary post.

For Appellant

in both the appeals : Mr.S.Vijayakumar

For Respondent

in both the appeals : Mr.K.K.Senthil

Standing Counsel for TNPSC

Assisted by Ms.C.N.G.Niraimathi

COMMON JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.S.Vijayajumar, learned counsel appearing for the appellant and Mr.K.K.Senthil, learned Standing Counsel appearing for the respondent in these Writ Appeals.

2.These Writ Appeals have been filed by the unsuccessful writ petitioners against the common order dated 20.06.2016, made in W.P. (MD) Nos.5975 an 5976 of 2016.

3.The Writ Petitions were filed by the writ petitioners, challenging the communications sent by the respondent TNPSC dated 16.09.2014, informing the appellants herein that they are not



eligible for being accommodated in the General Turn (General) category as they do not possess the required technical qualifications prescribed for the post. With regard to the three unfilled vacancies in General Turn (Ex. Service Men), the appellants were informed that there are sufficient Ex. Service Men available in the rank list, who are to be called for next phase of counseling under GT (Ex-Servicemen). The Writ Petitions were dismissed by the impugned common order and challenging the same the present appeals have been filed.

4.Mr.S.Vijayakumar, learned counsel appearing for the appellants contended that the appellants applied for Selection to the posts categorized under Group - II by the TNPSC, which are non-interview posts. The total number of non-interview posts, which were invited for selection under two notifications dated 30.12.2010 and 11.06.2011 was 3220. Out of the said vacancies 3171 posts were filled up and 49 vacancies remained unfilled. It is further submitted that in the said 3171 vacancies, which were filled, 964 were reserved for other categories viz., GT (Women), GT (Destitute Widow) etc., and the remaining number of posts for GT(G) was 540, in which the appellants claimed that they should have been accommodated. It is further submitted that the appellants participated in the Written Test held on 30.07.2011 and the appellant G.Balaji secured 237 marks and the appellant Prakash secured 234 marks and the cut off mark fixed for GT (G) was 238.5 and the appellants having not secured the said marks genuinely believed that they were rightly not selected. However, when the appellants downloaded certain informations available from the website of TNPSC, they came to know that the persons who have secured lesser cut off marks than the appellants, such as 235.50, 237 and 234 etc., have been appointed under GT (G) category, which is illegal.

5.It is further submitted that there are two categories of posts viz., Common Degree Posts, where all graduates can compete and there are Specific Degree Posts such as B.Com., where vacancies will be filled up with those candidates in the finance department. Thus, it is the submission of the learned counsel appearing for the appellants that candidates who have secured less than 238.5 have been selected and appointed and the same is illegal.

6.Referring to Annexure - IV of the paper book filed by the TNPSC, it is submitted that the case as projected by the appellants has been established and illegality has been committed and therefore, their non-selection has to be set aside and the Writ Petitions should have been allowed.

7.Mr.K.K.Senthil, learned Standing Counsel appearing for the respondent TNPSC sought to sustain their action by contending that out of 540 vacancies, 533 vacancies were ear-marked for common degree posts and 7 vacancies were ear-marked for specific degree



posts in the Finance Department and Law Department. Out of 37 vacancies in the post of Assistant in Finance Department only 6 vacancies were ear-marked for GT (General) category, likewise out of two vacancies in the posts of Personal Clerk in Finance Department only one vacancy was ear-marked for GT(G) category.

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8.It is further submitted that the appellants were eligible to be considered only for common degree posts because they did not possess the specific degree. Since the cut of mark for GT (G) was 238.5 for common degree posts, the appellants were not considered. With regard to the two candidates who have been referred to by the appellants viz., Shanmuga Vijayan and Nambirajan had specific degrees viz., B.Com. and M. Com. respectively and they were rightly selected for specific degree posts. It is further submitted that after selection, the candidates were admitted for counseling and at that time since the candidates in GT (G) category, who got selected against common degree posts by virtue of being top-rankers and who also possessed specific degree opted to be recommended for specific degree posts, and the seats vacated by them came to be occupied by candidates selected against specific degree posts. Therefore, it does not mean that candidates with less mark than the cut-off marks for common degree posts have been selected arbitrarily by the TNPSC. It is further submitted that the candidates who were selected are by virtue of the qualifications possessed by them, which were not possessed by the appellants. If the appellants had secured specific degrees they too might have come up for selection depending on the rank obtained by them. As the appellants did not possess specific degrees they can compete only for common degree posts. Since the candidates with Rank No.533 had secured 238.50 (533 vacancies for GT (G) Common degree posts) the cut-off was announced as 238.50. Further, it is submitted that 143 candidates secured the same cut of mark of 238.50. It is also submitted that the Rule of Reservation and the Roster applicable to each Unit/Departmental Units shows that the appellants do not have the chance to be selected since there are 15 candidates above the appellant G.Balaji and 36 candidates above appellant N.Prasath in GT category alone. There are 146 candidates above the appellant G.Balaji and 386 candidates above appellant N.Prasath among the overall candidates. The learned Standing Counsel for the respondent also referred to the statistics to substantiate his submissions.

9.We have elaborately heard the learned counsel appearing for the parties and carefully perused the materials placed on record.

10.Firstly, we need to point out that the impugned selection is for non-interview posts in the Combined Subordinate Services Examination - I conducted for the year 2009-2011 in the year 2011. The specific stand of the TNPSC is that all the vacancies have been filled up and even assuming that there are vacancies, there are several candidates above the appellants. It is the submission of the learned counsel appearing for the appellants that still there are



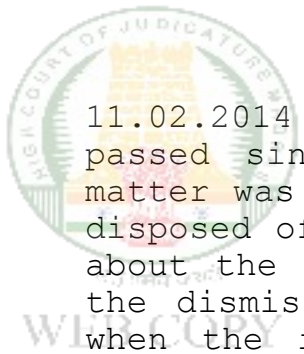
vacancies as on date. This submission cannot be countenanced because subsequent recruitments have been notified and conducted. Even assuming that there are vacancies, the same cannot be filled up by candidates, who had participated in the selection for the year 2009-2011.

11.The sheet anchor of the arguments of Mr.S.Vijayakumar, learned counsel appearing for the appellants is based on the information obtained by him from the website of the TNPSC. This information is pressed into service to argue that candidates who have secured lesser marks than the appellants have been accommodated in General turn. Firstly the information which was downloaded by the appellants, which have been filed in pages 59 to 73 of the typed set of documents, does not give the full particulars. More importantly the communal status of the candidates have not been mentioned.

12.The explanation offered by TNPSC in this regard requires to be tested for its correctness. The appellants do not possess specific degree qualification. Therefore, they cannot compete under the said category. The candidates who stood as top rankers in the written examinations were called for counseling. Among those top rankers from the common degree holders and in the counseling they have opted for specific degree posts, which obviously has to be granted to specific degree holders because merit coupled with specific degree qualification entitles the candidates to opt for specific degree posts. By their merit, they automatically got selected under common degree category. After they opt for a specific degree posts with the prescribed qualification, the resultant vacancies in the common degree posts have to be filled up. This is what has been done by the TNPSC.

13.We find there is absolutely no error in the procedure adopted by TNPSC for us to interfere. Further more, it is not as if the appellants are the persons, who are in the next turn for being considered. As already pointed out, the selection for year 2009-2011 has been completed and vacancies have been filled up. The appellants approached this Court by way of Writ Petitions in the year 2013 by filing W.P.(MD) Nos.7794, 7795, 19684 and 19685 of 2013 and the said writ petitions were disposed of by a common order dated 25.08.2014, directing their cases to be considered, subject to the appellants eligibility. There was no positive direction to select and appoint the appellants. Further, in the said petitions, there was no interim order to keep one post vacant for each of the appellants. After the direction of this Court, the order dated 16.09.2014 was passed by TNPSC rejecting the appellants' representations. This was subject put to challenge by the appellants in W.P.(MD) Nos.5975 and 5976 of 2016, which writ petitions were dismissed against which the present Writ Appeals have been filed.

14.It is to be pointed out that W.P.(MD) Nos.19684 and 19685 of 2013 were filed by the appellants praying for appointing them in any existing vacancies, an interim order was granted on



11.02.2014 to keep two posts vacant. We find that the said order was passed since the respondent TNPSC was not represented when the matter was heard. Be that as it may, when those Writ petitions were disposed of along with two other writ petitions, nothing was stated about the said interim order, which obviously would terminate upon the dismissal of the Writ Petition. Further more, as on the date when the interim order was granted on 11.02.2014, the selection process was completed as the written examination was conducted on 30.07.2011. Therefore, we find no reason to interfere with the common order of the learned Single Judge.

15. In view of the above, these Writ Appeals are dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Sj

To

The Secretary,
Tamil Nadu Public Service Commission,
Fracier Bridge Road,
Next to Dental Hospital,
Chennai.

+2 CC to Mr.S.VIJAYAKUMAR, Advocate (SR-96404[F] dated 06/11/2019)

judgment in
W.A. (MD) Nos.1225 and 1226 of 2016
04.11.2019

VB(02.12.2019) 6P 4C