



W.P.No.15390 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15390 of 2019
and W.M.P.Nos.27474 & 15355 of 2019

M.S.Kalaivani

...Petitioner

Vs.

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

2.The State of Tamil Nadu Rep. by its Secretary,
Revenue Department,
Fort St. George, Chennai – 9.

Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the Tamil Nadu Public Service Commission to publish the Reserve List for the Regular Selection List pertaining to the Combined Civil Services Examination-I (Group-II)



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(Interview Posts) for the year 2014-2015 and 2015-2016 notified in Notification No.7/2015 dated 30.4.2015 and consequently fill the unfilled vacancies caused due to non-joining/leaving of selected candidates with the candidates in the Reserve List to be published by the Tamil Nadu Public Service Commission in the order of seniority and as per roaster within a reasonable time limit before the publication of Regular Selection List with regard to the subsequent Notification No.15/2018 dated 10.8.2018.

For Petitioner : M/s.L.Chandrakumar

For Respondents : Ms.G.Hema for R1

Mr.D.Gopal
Government Advocate for R2

ORDER

A writ of mandamus has been instituted to direct the Tamil Nadu Public Service Commission to publish the Reserve List for the Regular Selection List pertaining to the Combined Civil Services Examination-I (Group-II) (Interview Posts) for the year 2014-2015 and 2015-2016 notified in Notification No.7/2015 dated 30.4.2015 and consequently fill the unfilled



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vacancies caused due to non-joining/leaving of selected candidates with the candidates in the Reserve List to be published by the Tamil Nadu Public Service Commission in the order of seniority and as per roster within a reasonable time limit before the publication of Regular Selection List with regard to the subsequent Notification No.15/2018 dated 10.8.2018.

2.The grievance in nutshell as advanced by the learned counsel for the petitioner is that the Reserve List as per the provisions of the Service Conditions Act and the Tamil Nadu Public Service Commission Rules had not been drawn by the Tamil Nadu Public Service Commission which resulted in denial of an opportunity for selection to Group I Services for the petitioner.

3.The learned counsel for the petitioner contended that the petitioner was successful in the process of selection and her name was placed in ranking list S.No.1572. The learned counsel for the petitioner reiterated that if at all the Reserve List was drawn as per the Tamil Nadu Public Service Commission Rules during the relevant point of time when the selection list was published,



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then the petitioner would be getting an opportunity to secure appointment through the said Reserve List. Once the Rules contemplates that the Reserve List is to be drawn the Tamil Nadu Public Service Commission had committed an error in not publishing a Reserve List enabling the selected candidates to secure appointment in the post where the selected candidates have not joined. Such an opportunity was denied to the writ petitioner and thus, the petitioner is constrained to move the present writ petition.

4.The learned counsel appearing on behalf of the 1st respondent/Tamil Nadu Public Service Commission brought to the notice of this Court that the counselling facility was introduced for issuing posting orders in various Departments after the publication of selection list. In view of the introduction of the counselling procedures the publication of Reserve List was dispensed with. In this regard, the Government also issued a letter dated 01.09.2021. The letter clarifies the position regarding the non-drawal of Reserve List and the relevant portion of the letter reads as under:

3) While agreeing that the Tamil Nadu Government



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Servants (Conditions of Service) Act, 2016, provides for maintenance of reserve list for the purpose of filling up vacancies arising subsequently, I wish to point out that in view of the transparency afforded by the method of selection through counselling and the difficulties in maintaining the reserve list, the Commission had made a considered decision to dispense with the drawal of reserve list for recruitment to posts wherein selection is made for multiple posts or single post in multiple units as provided for in the proviso to Rule 8A of the Commission's Rules of Procedure i.e., inspite of the non-drawal of a Reserve list, vacancies arising in posts included in Group I Services due to the selected candidates not joining duty or leaving after having joined duty are filled up by Supplemental Selection from the Ranking List.

4) As regards vacancies arising subsequently in the aforesaid posts, I wish to say that these are to be filled up through further recruitments for selection for appointment to the said posts. I would also like to point out that this way would be more expeditious than selection by operation of the reserve list, as outlined in para 2(g) above.

5) In the case of all other recruitments (other than



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recruitment to multiple posts or single post in multiple units), the reserve list is being drawn up.

6) I therefore request once again that the following amendment may be made to Section 27 of the said Act.

After the seventh proviso to Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016:

"Provided that in cases where a single recruitment is held to fill up vacancies in multiple posts or vacancies in a single post in multiple units and the selection of candidates is made through the method of counselling, the reserve list shall not be drawn".

7) Further, in view of the need to justify the bonafide decision of the Commission, I reiterate the Commission's request to provide retrospective effect to the said amendment.

5. Relying on the Government Letter, the learned counsel for the 1st respondent reiterated that the practice of drawal of Reserve List is not being



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followed by the Tamil Nadu Public Service Commission, since the counselling facilities are provided to the selected candidates. In the present case, at the time of counselling all the posts were filled up and therefore, the petitioner did not get an opportunity for appointment.

6.It is contended that the petitioner Selvi.M.S.Kalaivani, was one among the candidates who had applied to the Commission for appointment by direct recruitment to the post included in Combined Civil Services Examination-I (Group-II). The petitioner was summoned for the counselling held on 29.05.2018 based on her claim in on-line application. Her rank was assigned as 1572 on the date of counselling. The rank of the last candidate belonging to BC (W) selected for common degree post was 1546 and all the vacancies pertaining to common degree posts were filled. Hence, the petitioner Selvi.M.S.Kalaivani was left with no vacancy during her counselling.

7.The 1st respondent has stated that no Reserve List was drawn for the said recruitment. The Head of the Department / Unit Officers are requested to



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include not joined/joined and left vacancies / withheld vacancies to future estimate of vacancies to be furnished to the Commission. Therefore, no candidates were subsequently selected in the place of not joined/joined and left / withheld vacancies. Thus, the 1st respondent has contended that the petitioner was permitted to participate in the counselling and she was not within the zone of consideration during the counselling and thus, the writ petition is to be rejected.

8.No doubt, the Rules as rightly contended by the learned counsel for the petitioner contemplates the provision for drawal of Reserve List. The Rule 15(A) speaks about “Reserve List” which 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. Thus, Rule 15(A) facilitates the Tamil Nadu Public Service Commission to draw a Reserve List. It provides meaning for the Reserve List. However, it does not mandate for a Reserve List. When the Rules provide that the Reserve List means a list which is prepared so as to



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contain not less than 25% candidates of each reservation, it does not confer any right on the candidates to claim that the Reserve List must be drawn mandatorily by the Tamil Nadu Public Service Commission. Such a facility is an enabling provision made enabling the Tamil Nadu Public Service Commission to draw Reserve List which would not confer any right on the candidate who all are participating in the process of selection. Even mere selection would not confer any right on the candidates. The authorities competent are empowered even to cancel the selection and therefore, the selected candidates in such circumstances cannot claim that they must be appointed. Therefore, the Courts have repeatedly held that mere selection would not confer any right unless the selection is tainted with the allegations of malafides or some malpractices or corrupt activities are established. Thus, the drawal of Reserve List is a discretionary power conferred on the Tamil Nadu Public Service Commission which was dispensed with by the Tamil Nadu Public Service Commission on introduction of the counselling procedures from the year 2012 onwards. There is a reason for dispensing with the drawal of Reserve List, since the counselling facilities are open facilitating



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the selected candidates to choose their choice of departments after selection. In the present case, the petitioner was permitted to participate in the counselling. Since her turn did not come for option, she lost her opportunity. Thus, there is no violation of procedures.

9.The 1st respondent has clearly stated that the last candidate selected was in S.No.1546 and the petitioner was in rank list S.No.1572 and therefore, the petitioner could not be able to get an opportunity for appointment. This being the factum, the relief as such sought for in the present writ petition deserves no merit consideration.

10.Accordingly, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes
Internet : Yes
Speaking order : Yes
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To

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S.M.SUBRAMANIAM, J.

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