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W.P.No.8225 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

W.P.No.8225 of 2010

Dr.S.Subapriya

... Petitioner

Vs.

1.State of Tamil Nadu

Represented by Secretary to Government
Commercial Taxes & Registration Department,
Fort St. George, Chennai – 600 009.

2.Tamil Nadu Public Service Commission,

Represented by its Secretary,
Greens Road, Chennai – 600 006.

3.T.Selvam

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing respondents 1 and 2 to fill up the vacancy caused in the post of C.T.O. in Group I services due to the non-joining of Tmt.P.Kavitha or Tmt.K.Pradeepa, in the selection for the year 2006-2007 from the reserve list of the said year by appointing the petitioner who ranks as Sl.No.1 in the reserve list for the Backward class women category and General Turn women category in respect of the said post.



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For Petitioner : Mr.A.Jenasenan

For Respondents : Mr.Haja Nazirudeen
Additional Advocate General – I
Asst. by
Mr.M.Venkateswaran
Spl. Government Pleader (Taxes) for R1

: Mr.Abrar Mohammed Abdulla for R2

: No appearance for R3

ORDER

(Order of the Court was made by R.SURESH KUMAR, J.)

The petitioner in response to the notification issued by the 2nd respondent TNPSC Group I selection for various posts including Commercial Tax Officer had made application, selection was completed. Among various posts, for the Commercial Tax post there were 45 vacancies, out of which 13 vacancies reserved for Backward Class community, out of which, 4 is earmarked for Backward Class Women. Based on the mark secured by the writ petitioner, she has been placed in the reserve list of Backward Class Women as well as General Women i.e. Open Competition General Women.

2. In both the reserved list, the petitioner finds at place No.1.



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3. In this context, insofar as filling up of 4 vacancies earmarked for Backward Class Women for the Commercial Tax Officer post, 4 candidates have been selected which has been stated by the Service Commission in their counter affidavit which reads thus:

Against BC (Women) Vacancies - 4		
1	Kayalvizhi	Backward Class (Woman)
2	Santhi.M	Backward Class (Woman)
3	Kavitha.P	Backward Class (Woman)
4	Maheswari.M	Backward Class (Woman)

4. Among these 4 candidates, the 3rd candidate viz., P.Kavitha did not join.

5. Therefore a vacancy has caused for non-joining by the said Kavitha. To fill up the said vacancy a candidate has to be selected from the reserve list.

6. While doing this exercise, the Service Commission, instead of selecting a candidate from Backward Class Women, has selected the 3rd respondent who is in General turn in the reserve list. The reason being for selecting the 3rd respondent, according to the Service Commission, is that, though the said P.Kavitha was selected under Backward Class Women



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quota as per the roster fitment, she has been fit in under Backward Class General.

7. Therefore, once the vacancy caused because of non-joining of said Kavitha it was under misconception by the TNPSC to select one person from the reserve list meant for Backward Class General and not from Backward Class Woman, that is how the 3rd respondent was selected.

8. In this context, it is to be noted that as per the order of merit since the petitioner being a woman candidate already found place in the reserve list meant for Backward Class Women as a first candidate and the vacancy caused by the said P.Kavitha is also a Backward Class Woman candidate vacancy naturally only the candidature of the petitioner alone has to be selected, instead the 3rd respondent since was selected against which or aggrieved over the same, the petitioner had moved the present writ petition.

9. Heard Mr.A.Jenasenan, learned counsel appearing for the petitioner and Mr.Haja Nazirudeen, learned Additional Advocate General



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appearing for the 1st respondent and Mr.Abrar Mohammed Abdulla, learned Standing Counsel for the 2nd respondent. There is no representation for the 3rd respondent.

10. The learned Additional Advocate General for the 1st respondent as well as the learned Standing Counsel for the 2nd respondent would submit that, if at all based on the earlier judgment passed today in a similar circumstances in the matter of *The Secretary, Tamil Nadu Public Service Commission, No.1, Greams Road, Chennai – 600 006 Vs. R.Rajesh and others* in W.A.No.1616 of 2011 if the same principle is applied to the present case, in the vacancy caused by the said P.Kavitha, only the petitioner ought to have been selected as the said vacancy comes under the category of Backward Class (Women) not Backward Class (General). Therefore, if this Court ultimately comes to the conclusion that, in the vacancy caused by P.Kavitha only the petitioner has to be selected, there are, since many number of vacancies, still available as number of candidates including the said Kavitha did not join as per the instruction they received, the petitioner can be accommodated in any of these vacancies.



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11. However, we feel that, insofar as the right of the petitioner is concerned, if at all any vacancy is caused by non-joining under Backward Class (Women) or Open Competition Women quota, only in those areas the reserved list can be operated to the benefit of the petitioner.

12. If the vacancy caused by the said P.Kavitha is the vacancy for Backward Class (Women), therefore for the said vacant post the reserved list meant for Backward Class (Women) certainly be operated if that is operated, automatically the petitioner, who is already in the first position in the said reserved list, will be selected.

13. However, the non selection of the petitioner, in that eventuality, where the vacancy caused by P.Kavitha is only Backward Class (Women) vacancy, is not in consonance with the rules and procedures which are in vogue to be adopted by the Service Commission.

14. In this context, it is to be noted that, today in a similar circumstances, we have passed judgment in W.A.No.1616 of 2011, where, we have stated the following:



“21. Insofar as the 5 seats that was reserved for SC candidates for the post of Assistant Director of Rural Development is concerned, 3 among the 5 are for SC (General) and remaining 2 are for SC (Women). Insofar as SC (General) is concerned, the selection must have been made from among all the candidates irrespective of sex of the 6 candidates in the SC community based on their marks they secured.

22. In this context, since the said Vembu secured 403 naturally she has to be selected first, like that, the next candidate is Easwaran who secured 390 marks and the third candidate is Jeyaraman, who secured 388.50 marks that is why the Service Commission i.e. TNPSC has fixed the cut-off mark for SC (General) as 388.50. Thereafter the two vacancies earmarked for SC (Women), for which, one Loganayaki who secured 382 marks and Ramyadevi who secured 381 marks were selected.

23. Insofar as this selection is concerned, absolutely there can be no quarrel.

24. Once the selection is over, next job is to make the fitment as per the roster as stated by the Service Commission. In the earlier round upto 4th turn it has been



exhausted, therefore from 5th turn onwards this selection has to go and from 5th turn the next available vacancy for SC candidate is 6th turn, which, of course, is earmarked for SC (Women). If that Vembu though had been selected in the SC (General) category if she is not fitted in the 6th turn, she has to be fitted in the 16th turn meant for SC (General). In that case the said Vembu though secured the highest mark among the SC candidates of both sex would lose the seniority and she will be unnecessarily placed 10 persons below, therefore in order to avoid this kind of mismatch, the fitment would be made. At the time of the fitment being made, the candidate irrespective of the selection either under the General quota or the Women quota in the earliest available roster, the meritorious candidate would be fit in, accordingly the stand taken by the TNPSC to fit Vembu into 6th turn meant for SC (Women) cannot be found fault with.

25. To that extent there was no quarrel. The issue starts only thereafter where the said Vembu did not join. Therefore the vacancy caused by non-joining of the said Vembu is the vacancy necessarily to be the vacancy of SC (General) but not SC (Women). Since three vacancies specifically earmarked for SC (General) among the SC candidates who are the top meritorious candidates i.e. first



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3 meritorious candidates in SC alone would be entitled to be selected.

26. If that being the case, the first meritorious candidate viz., Vembu though was selected, subsequently she did not join and the vacancy has caused, the Service Commission must go to the reserve list meant for SC (General). The reserve list meant for SC (General) will consist of men as well as women. In that list the 1st respondent Rajesh stood in first position as he secured 387.5 marks, therefore he has to be selected and the list has to be forwarded to the Government i.e. the appointing authority where the rearrangement of fitment also must have been taken place by doing that exercise by the Service Commission.

27. Instead, the Service Commission has, in the wrong assumption, decided to pick up a candidate from the reserve list meant for SC (Women) and accordingly the 3rd respondent being a women who secured only 379 marks who stood as first in the reserve list for SC women has been selected and she has been fit in in the roster point i.e., 347 created or meant for these kind of candidates who have been subsequently selected from the reserve list. Therefore, the 6th roster point has not even filled up by the meritorious candidate viz., Vembu.



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28. *By selecting the 3rd respondent the quota of 3 vacancies earmarked for SC (General) has been given a go-by, because, the 3 vacancies earmarked for SC (General) must be on the basis of the marks obtained by SC candidates irrespective of sex. If that being so, if Vembu did not join, the next 2 persons viz., Easwaran and Jayaraman secured 390 and 388.50 marks since were already selected, thereafter the next candidate who secured highest mark is the 1st respondent Rajesh who secured 387.50 marks should have been selected as the Vembu did not join in the post and the vacancy has been caused because of non-joining. Instead, the TNPSC, in a complete wrong assumption, because the said Vembu has initially fitted in the 6th roster which is meant for SC (Women) thought that the vacancy caused by Vembu is not SC (General) but is SC (Women) and accordingly decided to select the 3rd respondent which is completely a wrong exercise and not in consonance with the reservation as well as the institution that has been provided in the notification issued by the Service Commission.*

29. *Therefore such a selection made in favour of the 3rd respondent omitting the candidature of the 1st respondent is bad in law. This issue has been exhaustively discussed and decided in favour of the 1st respondent*



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where the learned Judge has given direction to the appellant Service Commission to set aside the selection made in favour of the 3rd respondent and select in that place the 1st respondent Rajesh.

30. For the aforestated reasons, we do not find any error in the approach of the learned Judge and his conclusion that he has reached in the impugned order.

31. In the result, the appeal fails and therefore it is to be dismissed, accordingly is dismissed.”

15. The same principle will apply squarely to the present facts of the case also, as such, this writ petition is to be allowed with the following orders:

(i) That there shall be a direction to the 2nd respondent Service Commission to select the petitioner for the post of Commercial Tax Officer in respect of the selection in question made by the respondent TNPSC in the vacancy caused by one P.Kavitha meant for Backward Class Woman and accordingly the additional selection list shall be forwarded by the Service Commission to the State i.e. the 1st respondent, who, on receipt of the same, shall issue posting orders to the petitioner. The needful as indicated above shall



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be undertaken both by the 1st and 2nd respondents within a period of six weeks from the date of receipt of a copy of this order.

(ii) It is made clear that, insofar as the continuance of the 3rd respondent viz., T.Selvam in the said post is concerned, it is to be decided by both the 1st and 2nd respondents depending upon the vacancy caused by some more non-joining persons as per the Reservation Policy and with regard to the same we have not expressed any view.

16. With these directions, this Writ Petition is allowed to the terms indicated above. No costs.

(R.S.K., J.) (K.B., J.)

26.07.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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To

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- 1.The Secretary to Government
State of Tamil Nadu
Commercial Taxes & Registration Department,
Fort St. George,
Chennai – 600 009.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Greens Road, Chennai – 600 006.



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R. SURESH KUMAR, J.
And
K.KUMARESH BABU, J.

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