



WEB COPY



W.P.No.17036 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

W.P.No.17036 of 2020 and  
W.M.P.No.21114 of 2020

Robin Castro

... Petitioner

Vs.

1.The Government of Tamil Nadu,  
Rep by its Principal Secretary to Government,  
Home Department,  
Secretariat, Chennai 9.

2.Tamil Nadu Public Service Commission (TNPSC),  
Rep by its Member Secretary,  
Park Town, Chennai 3.

3.The Director,  
Fire and Rescue Services,  
No.17, Rukmani Lakshmipathy Road,  
Egmore, Chennai 8.

... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein culminating in impugned memo No.7968/OTD-B1/2015 dated 21.11.2020 on the file of the 2nd respondent herein and quash the same and consequently, direct the respondents 1 and 2 herein to appoint the petitioner in the post of Deputy Superintendent of Police reserved for MBC(G) in the vacancy notified by



W.P.No.17036 of 2020

the 2nd respondent herein vide advertisement No.19 of 2016 dated 09.11.2016.

(Prayer amended vide order dated 01.12.2023,  
made in W.M.P.No.33785 of 2023)

For Petitioner : Mr.M.Santhanaraman

For Respondents : Mr.T.Arunkumar, Addl. Govt. Pleader for R1&R3  
Mr.Abrar Mohammad Abdullah,  
Standing Counsel for R2

### **ORDER**

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein culminating in impugned memo No.7968/OTD-B1/2015 dated 21.11.2020 on the file of the 2nd respondent herein and quash the same and consequently, direct the respondents 1 and 2 herein to appoint the petitioner in the post of Deputy Superintendent of Police reserved for MBC(G) in the vacancy notified by the 2nd respondent herein vide advertisement No.19 of 2016 dated 09.11.2016.

2. Heard Mr.M.Santhanaraman, learned counsel for the petitioner and Mr.T.Arun Kumar, learned Additional Government Pleader for the respondents 1 and 3. Mr. Abrar Mohammed Abdullah, learned Standing



W.P.No.17036 of 2020

Counsel for R2.

WEB COPY

3. Mr.M.Santhanaraman, learned counsel for the Petitioner submitted that the Petitioner who appeared for combined Civil Services Group I Examination was selected for the post of District Fire Officer. As per the communal roster viz., MBC(G), he is fourth in the ranking list. One R.D.Shalini was also selected in the same examination for the post of Deputy Superintendent of Police. Subsequently, R.D.Shalini appeared once again for the Civil Services Group I Examination of the next year and was selected and appointed as Deputy Collector.

4. According to the Petitioner, R.D.Shalini's vacancy will be available to him as he is next in the line of seniority and hence, he should be posted as Deputy Superintendent of Police in the place of R.D.Shalini. The representation given by the Petitioner was rejected by the second Respondent by stating that the Deputy Superintendent of Police post which fell vacant due to R.D.Shalini's resignation has been surrendered for the next recruitment as per Section 3(u) of the Tamil Nadu



W.P.No.17036 of 2020

Government Servants (Conditions of Services) Act, 2016, which mandates the Public Service Commission to maintain a regular and reserve list of candidates, who were selected during the selection process.

5. Section 3(u) is extracted as under:

*3(u) “reserve list” means a list which is prepared so as to contain not less than twenty five per cent 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.”*

But the reserve list was not drawn as per the mandate under Section 3(u) of the Tamil Nadu Government Servants (Conditions of Services) Act, 2016. If the vacancy has arisen due to non-joining or joined and left duty, a suitable candidate would be selected from the ranking list against the said vacancy through Counselling as per proviso 5 of Section 27(f) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016, after receipt of the proposal from the Government.

6. The points for consideration in this matter could be,

(i). Whether the reserve list should be drawn and get valid till the



W.P.No.17036 of 2020

next selection?

WEB COPY

(ii). Whether the vacancy arose in view of the resignation of R.D.Shalini ought to have been surrendered to the relevant recruitment through which she had been selected as Deputy Superintendent of Police or to the subsequent recruitment, where she was recruited as Deputy Collector?

(iii). Whether the reserve list is applicable only against the vacancies which arose due to the abandonment of the benefit by those candidates who got selected or whether it is applicable only against those vacancies which arose due to the candidates who got selected had left after joining?

7. The above issue has been considered in the case of *the Secretary TNPSC Vs. R.Nagarajan*, reported in 2008 (3) LW 222, in paragraph 11 & 12, it is held that the reserve vacancies were applicable to those candidates who got selected but left after. The relevant paragraphs are extracted as below:

*“11.Three selected candidates - E.Bakthavatchalam*



WEB COPY

*[General Turn (General)]; G.M.Vasanthi [General turn (General)] joined the post, left the services and joined as Civil Judges. One K.Sathasivam (MBC/DC)[W] had resigned from service. The main point raised is, in the resultant vacancies arising out of three candidates joined and subsequently left/resigned, whether the Writ Petitioners are to be appointed. Contention of TNPSC is that Rule 10(a)(i) cannot be operated in cases of candidates who joined and subsequently left/ resigned. What is urged is strict interpretation of proviso to rule 10(a)(i); Rule 10(a)(i) which reads as under :-*

*"Provided further that the reserve list of successful candidates shall be in force until the regular list of successful candidates is drawn up subsequently; and that candidates shall be allotted from such reserve list for the vacancies in the place of those who have not joined duty".*

*12.Though 10(a)(i) provides for allotment from reserve list for the vacancy in the place of those who have not joined duty, it cannot be strictly interpreted so as to exclude resultant vacancies caused due to candidates joined and subsequently left/resigned. The very purpose of Subordinate Service Rules is to sub-serve the interest of the public and the process of selection. No doubt a candidate has indefeasible right to be appointed for the*



W.P.No.17036 of 2020

WEB COPY

*post, but when the Writ Petitioners have been placed in the reserve list, it is a fallacy to argue that they cannot be appointed in the resultant vacancies. We are of the view that if such interpretation is to be adopted, the expression "such reserve list will be in force .... until the drawal of next selected list by the commission", would defeat the intention of the Legislature. We are of the view that a meaningful interpretation of rule 10(a)(i) would sub-serve the interest of the public. In fact, having noticed the anomaly, the Government has issued amendment to rule 2 of Part I and Rules 10(a)(i)(i) and 22(d) under Part II of the General Rules for the Tamil Nadu State and Subordinate Services to the effect that "the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty but left thereafter while the reserve list is in force". The learned Counsel for the Commission has submitted that the above amendment has only prospective effect and it cannot be applicable to the Writ Petitioners."*

**8.** The above judgment was followed by the Division Bench of this Court in *the Secretary, TNPSC Vs.The Secretary to government Department of Personnel & Admn. Reforms & others.* in W.A.Nos.1466



W.P.No.17036 of 2020

of 2008 & 24 to 27 of 2009. In the said judgment, it is observed as under:

*“12. The cases in hand are governed by the Tamil Nadu State and Subordinate Service Rules. Rule 15-A defines 'reserved list' as quoted 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.#*

*As per proviso to Rule 10 (1) (i), appointment by direct recruitment can be made of any person whose names have been sponsored by the TNPSC from its regular or reserved list of successful candidates.”*

**9.** The same position has been once again confirmed by an another Division Bench of this Court in *J.Arun Prasad Vs. TNPSC, Rep. by its Secretary* reported 2018 SCC OnLine Mad 823.

*“11. Both petitioners have undergone the due process of selection and have been informed of being placed in the reserve list. Both suffered no disqualification whatsoever. For both of them to expect that they would be appointed in proper turn as and when*



WEB COPY

*vacancies arise is but legitimate expectation. To be so appointed is their vested right. Whiles, in the humble opinion of this Bench, it would not be open to the Committee for Selection and Appointment of District Judges (Entry Level) and Civil judges Committee of this Court to disentitle petitioners by informing that vacancy which arose owing to a candidate stepping out of office should be pooled in for consideration in the proposed selection process. To repeat, in publishing the register number of candidates selected provisionally it has been informed that the reserve list would be valid till the drawal of next selection list for the post. A Division Bench of this Court in, The Secretary, Tamilnadu Public Service Commission vs. R.Nagappan & Others (2008-3-LW-222) held :*

*“12. Though 10(a)(i) provides for allotment from reserve list for the vacancy in the place of those who have not joined duty, it cannot be strictly interpreted so as to exclude resultant vacancies caused due to candidates joined and subsequently left/resigned. The very purpose of Subordinate Service Rules is to sub-serve the interest of the public and the process of selection. No doubt a candidate has indefeasible right to be appointed for the post, but when the Writ Petitioners have been placed in the reserve list, it is a*



WEB COPY



W.P.No.17036 of 2020

*fallacy to argue that they cannot be appointed in the resultant vacancies. We are of the view that if such interpretation is to be adopted, the expression "such reserve list will be in force.... until the drawal of next selected list by the commission", would defeat the intention of the Legislature. We are of the view that a meaningful interpretation of rule 10(a)(i) would subserve the interest of the public. In fact, having noticed the anomaly, the Government has issued amendment to rule 2 of Part I and Rules 10(a)(i)(i) and 22(d) under Part II of the General Rules for the Tamil Nadu State and Subordinate Services to the effect that "the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty but left thereafter while the reserve list is in force....."*

*Applicable Rule 2(15-A) of the Tamil Nadu State and Subordinate Service Rules (corresponding to Sec. 3u of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016) read:*

*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 in force until the regular list is drawn up subsequently."*

*12. Following the rationale of the judgment of this Court in The Secretary, Tamilnadu Public Service*



W.P.No.17036 of 2020

WEB COPY

*Commission vs. R.Nagappan & Others (2008-3-LW-222), this Court holds that petitioner in W.P.No.5629 of 2018 is entitled to appointment against the vacancy that had arisen on the resignation of Miss sujatha.K and petitioner in W.P.No.25778 of 2015 would be entitled for consideration of appointment should vacancy in his category of eligibility arise before the drawing up of the subsequent regular list.”*

10. Mr.Abrar Mohammed Abdullah, learned standing counsel for the TNPSC submitted that though the Petitioner stands in the fourth ranking, prior to him there are two other persons in the same list (MBC(G)). The Petitioner cannot rightfully claim that he is the next person, who is eligible to be appointed in the place of R.D.Shalini. The Petitioner had joined as District Fire Officer and hence he will not come under the reserve list.

11. However, the learned counsel for the petitioner submitted that two other persons by name Vinoth and Anusuya have filed an affidavit by stating that they are not interested to get appointed as Deputy Superintendent of Police. In that case, the petitioner will be the next in the



W.P.No.17036 of 2020

list and he would get the chance of getting appointed to the post of Deputy Superintendent of Police.

**12.** The vacancy has arisen in view of the resignation made by one R.D.Shalini, who has got selected as Deputy Collector vide the recruitment of the year 2016-19 and she joined in the said post on 03.08.2020.

**13.** It is submitted by the learned Standing Counsel for the second respondent that whenever a vacancy arises due to the person who had been selected, did not join or joined duty and thereafter left, a suitable candidate from the ranking list against the said vacancy as per proviso 5 of Section 27(f) of the Tamil Nadu Government Servants (Conditions and Service) Act, 2016, would be selected, after receiving the proposal from the Government in that regard. It is submitted that so long as, the Government send the proposal to the second respondent, it cannot be claimed that the vacancy arose against the resignation of R.D.Shalini was also included in the subsequent notification for recruitment of the year 2016-19. It is obviously because the second respondent himself can know



W.P.No.17036 of 2020

about the vacancy only when the Government notifies and sends its recommendation.

**14.** The failure on the part of the second respondent to prepare reserve list cannot affect the interest of those persons who have the likelihood of getting appointed to the posts arise as against the consequential vacancies. However, it is upto the second respondent to ratify his own delay in preparing the waiting list and act accordingly once the recommendation is obtained from the first respondent. Since the first respondent cannot have any technical difficulties in updating the vacancies that has arisen due to a candidate left after joining, the first respondent shall send an appropriate proposal along with the recommendation to fill up the vacancy arose in the place of R.D.Shalini from the waiting list. As stated already, the petitioner stands next in the queue, as the other two persons stood ahead of him did not opt to the post of Deputy Superintendent of Police.

**15.** Since the vacancy has arisen as early as on 03.08.2020 and the proposal has not yet been sent so far to the second respondent that it is appropriate to direct the first respondent to take immediate steps to send



W.P.No.17036 of 2020

the proposal along with the recommendation to the second respondent and in turn to direct the second respondent to consider and appoint the petitioner to the above post.

**16.** In the result, this Writ Petition is allowed and the impugned order in No.7968/OTD-B1/2015 dated 21.11.2020 on the file of the 2nd respondent is set aside and the first respondent is directed to take immediate steps to send the proposal in respect of the vacancy arose to the post of Deputy Superintendent of Police due to leaving of R.D.Shalini along with the recommendation to the second respondent to appoint the petitioner in the said vacancy, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the second respondent shall consider and issue orders to appoint the petitioner to the post of Deputy Superintendent of Police within a period of four weeks on the date of receipt of the proposal along with the recommendation. No costs. Consequently, connected miscellaneous petition is closed.

**01.12.2023**

Index : Yes

Internet : Yes/No

gsk



W.P.No.17036 of 2020

To

WEB COPY

- 1.The Principal Secretary to Government,  
Home Department,  
Secretariat, Chennai 9.
- 2.The Member Secretary,  
Tamil Nadu Public Service Commission (TNPSC),  
Park Town, Chennai 3.
- 3.The Director,  
Fire and Rescue Services,  
No.17, Rukmani Lakshmipathy Road,  
Egmore, Chennai 8.



WEB COPY



W.P.No.17036 of 2020

**R.N.MANJULA, J.**

gsk

**W.P.No.17036 of 2020 and**  
**W.M.P.No.21114 of 2020**

**01.12.2023**