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W.A.No.93 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A. No.93 of 2023
and
C.M.P. No.837 of 2023**

The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai-600 003.

...Appellant

v.

1.S.Rama

2.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009.

...Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letter Patent, praying to set aside the order dated 04.11.2022 passed by the learned Judge in W.P.No.45 of 2017.

For Appellant : Mr.P.Wilson, Senior Advocate
assisted by Mrs.G.Hema

For Respondents : Mr.R.Singaravelan, Senior Advocate
for Mr.V.S.Jagadeesan for R1



JUDGMENT

(Judgment of the Court was made by *MOHAMMED SHAFFIQ,J.*)

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The writ appeal is filed challenging the order of the learned Single Judge holding that though the first respondent had not attended the counselling on the schedule date, she cannot be deprived of her right to appointment, inasmuch as she was unable to attend the counselling on the fixed date as she had met with an accident injuring her left foot restricting her movement.

2. Brief facts:

The appellant / Tamil Nadu Public Service Commission (hereinafter referred to as “TNPSC”) issued a notification dated 30.12.2010 in Advertisement No.258 inviting applications for direct recruitment to the posts under Tamil Nadu Combined Subordinate Services Examination and also supplementary notification dated 08.02.2011 in Advertisement No.265. The posts included were (a) Interview Category posts and (b) Non-Interview Category posts of 16 and 22 respectively. As far as the Interview posts were concerned, the selection process comprised of the following stages namely;

- i) Written Examination and
- ii) Oral test in the form of an interview

and the final selection was on the basis of the total marks obtained by taking the



marks secured in the written or oral test together, while also following the Rule of Reservation. Insofar as the Non-Interview category posts, the selection was made on the basis of the total marks obtained in the Written Examination and the option exercised by the candidate following the Rule of Reservation.

3. The 1st Respondent applied for selection under Combined Subordinate Services Examination-I and was issued with a Hall Ticket bearing Registration No.00736187. The written examination was held on 30.07.2011. The 1st Respondent had completed M.A.(History) and M.Com. from Annamalai University. She having studied B.Com. Degree course in Tamil Medium, is stated to be entitled to apply for the posts under the category reserved for “Persons Studied in Tamil Medium (PSTM)” as per G.O.Ms.No.145 Personnel and Administrative Reforms (S) Department, dated 30.09.2010, which the 1st Respondent had opted in her application. In the written examination held on 30.07.2011, she secured 232.5 marks, out of 300 marks. Thereafter, the qualified candidates were called for interview for the post falling under the Interview Category from 20.06.2012 to 23.07.2012 which was followed by one more round of interview during the period from 15.10.2012 to 20.10.2012 and from 10.11.2012 to 12.11.2012 for the left out candidates.



4. The result of the selected candidates was hosted in the website of the Department taking into account the marks secured in the Written Examination and Oral Test. Thereafter, Counselling was held based on the total marks secured by the applicants in October 2012. The Counselling schedule was also hosted in the appellant's website. The 1st Respondent came to know that though she had secured 232.5 marks in the written examination, she was left out, while applicants with lesser marks were called for Interview category posts given in Table 1 of the Notification. She sent an E-mail stating that she was eligible under the category of General Turn (Women), in view of the fact that the mark obtained by the last candidate in the Reservation category was less than the mark secured by the first Respondent i.e., 232.5 marks as would be evident from the following table:

<i>Communal categories</i>	<i>Marks obtained by the last candidate</i>	<i>Posts Name</i>
General Turn (Woman) Tamil Medium	229.20	Common Degree Post
	208.50	A.S.O.(Finance)
	229.50	Jr.Co-Op Auditor

5. As there was no response, the 1st Respondent herein filed a writ petition in W.P.No.3759 of 2013 praying for a writ of mandamus to direct the appellant to appoint her and to call her for Oral Test in General Turn (Women) category.

6 . The above writ petition came to be allowed observing as under:

"4. The petitioner was not called for interview for no fault of the petitioner. Admittedly, the petitioner obtained more than the marks secured by the last



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candidate who was called for interview. Hence, I am inclined to allow the writ petition and direct the second respondent to call the petitioner for oral test in General Turn (Women) Tamil medium category for appointment for common degree post or ASO (Finance) under its notification advertisement No.258, dated 30.12.2010. The second respondent is directed to hold interview to the petitioner, within a period of three weeks from the date of receipt of copy of this order."

7. Pursuant to the order passed in the writ petition, the 1st Respondent was called upon to appear for the Oral Test on 29.10.2013 for members selected for appointment to the posts including the Combined Subordinate Service Examination – I Interview Category Posts. On the very same day i.e., 29.10.2013, the appellant obtained a declaration form to the effect that the 1st Respondent was prepared to attend the counselling on 07.11.2013. The 1st Respondent states that she objected to signing the declaration stating that it was inappropriate to decide the date of counselling, even before the interview was over. However, the 1st Respondent was told that unless the declaration form was signed she would not be permitted to attend the oral test. The 1st Respondent submitted that she had no other option but to sign the said declaration. The 1st Respondent appeared for the Oral Test and was awarded 24 marks out of a total of 40 marks and she thus secured 256.5 marks in all i.e., 232.5 in written examination and 24 marks in the Oral Test.

8. While so, the 1st Respondent met with an accident on 30.10.2013 and is stated to have suffered serious injury to her left foot. On 07.11.2013, i.e., the date



fixed for counselling, the 1st Respondent was unable to walk and therefore, sent a letter dated 07.11.2013 requesting the appellant to inform the date of counselling. As there was no response, the 1st Respondent sent another letter dated 27.12.2013 requesting the appellant herein to inform about the status of the 1st respondent's posting. The appellant after about 50 days from the letter dated 07.11.2013, sent a letter dated 26.12.2013 referring to the 1st respondent letter dated 07.11.2013 and informed her that she had lost the chance to get a post as she had not attended the counselling. The relevant portion of the impugned order reads as under:

"The attention of Tmt.S.Rama is invited to the references cited. In obedience to the orders of the Hon'ble High Court in the reference first cited, the petitioner Tmt.S.Rama was summoned for Oral Test in the reference third cited. The petitioner had attended the Oral Test on 29.10.2013 and gave a declaration in the reference fourth cited to attend the counselling on 07.11.2013 but has failed to attend the counselling on the said date. Therefore, she loses her chance of getting a post in the Combined Subordinate Services Examination-I, 2009-2011."

9. Order of the learned Single Judge:

The above order dated 26.12.2013 was challenged by way of writ petition viz., WP.No.45 of 2017. The learned Single Judge was pleased to allow the writ petition on finding that the 1st Respondent was unable to participate in the counselling on the fixed date i.e., 07.11.2013 only in view of her medical condition (she had met with an accident resulting in injury to her leg restricting her movement / bed ridden). It was thus observed that the 1st Respondent ought not be deprived of her right to appointment. The relevant portion of the order is extracted hereunder:



"8. No doubt, the instruction to the candidates issued to the TNPSC are to be scrupulously followed. A candidate violating the procedure is not entitled for selection and appointment. However, in the present case, there is no such violation committed by the petitioner. She participated in all the processes and was successful and scored higher marks than that of the cut marks and she was eligible for appointment to any one of the post in Combined Subordinate Services Examination-I. However, on account of medical reasons, she could not be able to participate in the counselling and she had submitted all the relevant documents to establish that she availed the medical leave on the particular day which was recorded in her Service Register and therefore, she must be considered. In such circumstances, a candidate need not be deprived of her right of an appointment and this being the factum, this Court is inclined to consider the writ petition and consequently, the impugned order dated 26.12.2013 is quashed. The respondents are directed to issue an appointment order to the writ petitioner in any one of the post under the Combined Subordinate Services Examination-I for which the petitioner is eligible in any department, within a period of twelve weeks from the date of receipt of a copy of this order."

Challenging the above order of the learned Single Judge, the present writ appeal is filed.

10. Case of the Appellant :

a) The appellant submitted that in compliance of the order of the learned Judge dated 05.06.2013, the 1st Respondent was summoned for Certificate verification on 28.10.2013 and Oral Test was conducted on 29.10.2013 as she was eligible for consideration under General Turn (W) PSTM category. On 29.10.2013 i.e., the date of oral test, the 1st Respondent was informed that counselling would be held on 07.11.2013. An undertaking in writing was also obtained that she would attend counselling on the said date and that, she was aware that no separate communication would be sent to her informing the counselling date.



b) The 1st Respondent did not participate in the counselling conducted on 07.11.2013, instead sent a letter through e-mail on 07.11.2013 requesting to inform the date of counselling for CSSE-I, 2009-11 based on the marks obtained by her in the Written examination and in the Oral Test.

c) The request of the 1st Respondent was placed before the Commission and the Commission sent a memo to the 1st Respondent informing that she lost her chance to appointment as she had failed to attend the counselling on the fixed date i.e. 07/11/2023 and thereafter, the vacancies were filled by other candidates, who attended the counselling on the said date. Without considering all these aspects, the learned Judge erred in allowing the writ petition in favour of the 1st Respondent.

11. Case of the 1st Respondent

a) The appellant had failed to provide appointment to the 1st Respondent by rejecting her claim to appointment only on the ground that she had not attended the counselling overlooking the fact that she was unable to attend the counselling in view of the accident which restricted her movement and was unable to travel on the date fixed for counselling. As a matter of fact, the counselling intimation also contains a clause which would permit in extraordinary circumstances, counselling may be adjourned to another date and the candidate can then choose the post which is available at that time.



b) The above note is a result of the policy decision that meritorious candidates who are unable to attend counseling on the fixed date, ought to be provided with one more opportunity, if it is shown that their inability to attend was only in view of extraordinary circumstances. It is the case of the 1st Respondent that she was unable to attend the counselling on 07.11.2013, only in view of the accident which had made her bedridden.

c) Counselling was only to enable the 1st Respondent to make a choice of the posts available and thus, even if she had not attended the counselling, the appellant herein ought to have appointed the 1st respondent herein, based on the marks obtained in the written and the oral test. Thus, the order of the learned single judge is justified and does not warrant interference.

12. Heard both sides and perused the materials available on record.

13. The assumption that admission of candidate for counselling would mean that the candidate selection is final/ complete and the above exercise is meant only for the limited purpose of enabling the candidates to make a choice of the options amongst the available post, is misconceived. This would be evident from a reading of the note attached to the counselling schedule issued to the candidates calling for counselling. The relevant portion of which reads as under:



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"3. The provisional admission of the candidates for counseling does not confer any right for selection to the posts included in CSSE-I, 2009-2011.

4.The candidate who does not appear for counselling on the scheduled date will lose his/ her seniority in the combined merit list, consequential allotment and they will not be given any further chance to appear for the same.

5.In extraordinary circumstances, if such candidate requests with valid reasons to permit him/ her for counselling on another day, the Commission reserves the right to admit such candidate for counselling and he/she is confirmed to choose the posts which is available at that time."

14. The 1st Respondent may be right in submitting that if extraordinary circumstances are shown, which prevented the applicant/ candidate from appearing/ participating in the counselling, the same could be rescheduled. To appreciate the said submission, it may be relevant to extract the letter dated 07.11.2013 sent by the 1st Respondent, which reads as follows:

"As per above mentioned Memorandum CSSE-I, 2009-2011 Direct Recruitment dated on 29.10.2013. I came to know from TNPSC website that I have scored 24 marks in Direct Recruitment and Total mark for Written and oral Examination was 156.50. So based on that CSSE-I, 2009-2011 dated 30.07.2013 Regarding the merit list of job post of information in Memo CSSE-I, 2009-2011. Kindly provide me the list of job placement and counselling date which is based on the preferential of marks secured by me and hence I request you to inform the list of post allotted to me during counselling. "

14.1. A perusal of the above letter dated 07.11.2013 would not reveal any circumstances much less extraordinary circumstances to exist, which prevented the 1st Respondent from attending the counselling. Therefore, we see no reason to find fault with the rejection of the 1st Respondent's candidature for appointment.



15. Secondly, the order of rejection dated 26.12.2013 has been challenged by the 1st Respondent after almost 4 years from the date of the impugned order and the said laches remain unexplained. Moreover, we are informed that the posts have been filled, thereby, resulting in creation of 3rd party right, which would now be disturbed in the event of any interference by this Court, which is yet another reason to exercise restraint. In this regard, it may be useful to refer to the following judgments of the Hon'ble Supreme Court:

(i) Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627 : 2009 SCC OnLine SC 174 at page 237

“38. It is not in dispute that for filling up the post of 112 vacancies about 6000 candidates applied. Processing of their applications and holding of written examination, viva voce examination and physical ability test took a long time. At the first stage of the recruitment process, 57 posts more than the advertised 112 posts were filled up.

39. The appellant did not question the legality and/or validity thereof. He should have done the same at the earliest possible opportunity. Having regard to the emergent situation, in regard where to we have taken note of earlier, proposal was made to increase the number of vacancies from time to time.”

(emphasis supplied)

(ii) Meena Sharma v. State of J&K, (2020) 15 SCC 648 : 2019 SCC OnLine SC 1580 at page 653

“The four-year delay on the part of the fifth respondent in contesting the appointment of the appellant disentitled her to claim any relief.”

(iii) Union of India v. N. Murugesan, (2022) 2 SCC 25 : (2022) 1 SCC (Civ) 711 : (2022) 1 SCC (L&S) 328 : 2021 SCC OnLine SC 895 at page 38

“22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge



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before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.”

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16. For all the above reasons, the order of the learned Single Judge requires interference and hence, the same is set aside and the writ appeal is accordingly, allowed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]

08.11.2023

Index: Yes/No

Speaking order / Non speaking order

Neutral Citation: Yes/No

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To:

The Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai-600 009.



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