



W.A.No.1616 of 2011

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.A.No.1616 of 2011

The Secretary,
Tamil Nadu Public Service Commission,
No.1, Greams Road,
Chennai – 600 006.

... Appellant

Vs.

1.R.Rajesh

2.The Principal Secretary to Government,
Department of Rural Department,
St. George Fort,
Chennai – 600 009.

3.N.C.Kalaivani

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Act, praying to set aside the order dated 06.08.2010 made in W.P.No.2958 of 2010 passed by this Court.

For Appellant : Mr.Abrar Mohammed Abdulla

For Respondents : Mr.T.C.Gopalakrishnan for R1
: Mr.P.Kumaravel
Additional Government Pleader for R2
: Notice Served – No appearance



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JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

This writ appeal has been directed against the order passed by the Writ Court dated 06.08.2010 made in W.P.No.2958 of 2010.

2. The appellant Tamil Nadu Public Service Commission (in short 'TNPSC') called for application for selection of various posts including Assistant Director of Rural Development.

3. Such notification was issued by TNPSC on 01.08.2007. As per the said notification, various posts in Group-I Services like Deputy Collector, Deputy Superintendent of Police including the Assistant Director of Rural Development were to be filled up. Insofar as the Assistant Director of Rural Development is concerned, there are 29 vacancies out of which 5 vacancies were earmarked for Scheduled Caste communities.

4. Out of this 5 vacancies, two vacancies are exclusively earmarked for SC (Women) and the remaining 3 for SC (General).



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WEB COPY 5. The 1st respondent/Rajesh belongs to Scheduled Caste Community and he also applied for such selection. Selection went on and ultimately the results were published i.e. the selection list by the TNPSC. In the said selection list, 5 candidates initially were selected. The relevant table for selection of such 5 candidates, according to the TNPSC, reads thus:

“Schedule Caste Category Fitment:

<i>Roster turn</i>	<i>Category</i>	<i>Mark details</i>	<i>Category adjusted</i>	<i>General Rank</i>	<i>Name</i>	<i>S.No. In the Post wise Ranking List</i>
6 th	SC (W)	403.00		139	Vembu	23
16 th	SC	390.00		216	Easwaran	26
22 nd	SC (W)	382.00		258	Loganayaki	28
26 th	SC	388.50		224	Jayaraman	27
32 nd	SC	381.00	Women	263	Ramyadevi	29

6. The cut-off mark for SC (General), according to TNPSC, was 388.50. The three candidates viz., Vembu, Easwaran and Jayaraman who stood as first three candidates were selected. Since two vacancies earmarked for SC (Women) one Loganayaki and one Ramyadevi were selected they secured 382 and 381 marks respectively. This is how the selection was completed.



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7. Insofar as the candidature of the 1st respondent is concerned, though he secured 387.5 marks, he could not reach the zone of consideration as the last person in the SC (General) selected who secured 388.50 marks, therefore the 1st respondent has been placed as top in the reserve list meant for SC (General).

8. When that being so, the candidate viz. Vembu who secured 403 marks and was selected under SC (General) category did not join, therefore it become incumbent on the part of the Service Commission to operate the reserve list and select the next person in the reserve list to fill up the vacancy caused by the said Vembu.

9. In this context, it is the case of the TNPSC that, even though the selection of 5 candidates, as stated supra, have been made based on their marks they secured for SC (General) as well as SC (Women) candidate, that Vembu since secured 403 marks though was selected under SC (General) quota, when the fitment was made, the next available turn was the 6th turn and the said 6th turn is meant for SC (Women), therefore the said Vembu has been fit in in the 6th turn which is for SC (Women).



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10. Since the said Vembu did not join in the vacancy caused by her at SC (Women) i.e. the 6th turn, one more person to be selected from the reserve list to fill up in the SC (Women) 6th turn, accordingly the next women candidate who secured highest mark who is found place in the reserve list for SC (Women) viz., N.C.Kalaivani who is the 3rd respondent herein was selected.

11. Therefore even though the writ petitioner/1st respondent (Rajesh) secured 387.5 marks since he is the male candidate, he was not selected for the vacancy caused by the said Vembu for the 6th turn which is meant for SC (Women).

12. This stand taken by the TNPSC was opposed by the writ petitioner Rajesh who had gone to the Writ Court and filed the said writ petition seeking for a writ of Certiorarified Mandamus to call for the records of the TNPSC selection cum waiting list dated 03.06.2009 and to quash the same insofar as selecting the 3rd respondent i.e. Kalaivani as the Assistant Director of Rural Development in the SC (General) quota and consequently seek for direction to the TNPSC to appoint the writ petitioner i.e., the 1st respondent as Assistant Director of Rural



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Development under the SC (General) quota from the reserve list. The said writ petition was heard and disposed by the learned Judge by order dated 06.08.2010. In the said order, the learned Judge, having exhaustively discussed the factual matrix as well as the legal position of the issues, has ultimately given the following direction:

“31.In this case, the selection of Ms.Vembu was against General category. Hence, the selection of third respondent to the post of Assistant Director of Rural Development is bad and the same is set aside. The first respondent is directed to select and appoint the petitioner in the post of Assistant Director of Rural Development, within a period of four weeks from the date of receipt of a copy of this order.”

13. Aggrieved over the same, the present appeal has been directed by the TNPSC.

14. It is to be noted that, though a declaration was given by the learned Judge in the impugned order that, the selection of the 3rd respondent to the post of Assistant Director of Rural Development is bad and the same accordingly was set aside, the 3rd respondent did not come forward to prefer any appeal against the impugned order till date.



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15. Heard Mr.Abrar Mohammed Abdulla, learned Standing

Counsel appearing for the appellant TNPSC.

16. He would contend that, the reason for selecting the 3rd respondent in place of the Vembu has been explained by the TNPSC at paras 7 to 9 of the counter affidavit, which they filed before the Writ Court, which reads thus:

“7.It is submitted that a woman candidate can be selected against general vacancies in her category if she secures mark within the cut-off marks of General category of that communal category. In the instant case Selvi/Tmt. Vembu (Female) having secured 403.00 mark which is higher than the cut-off mark for the post of ADRD, came to be selected against SC_General 1/3. The other two candidates selected against SC_General 2/3 and SC-General 3/3 are Easvaran and Jayaraman. Two women candidates who came to be selected against 2 SC (Women) vacancies are Loganayaki and Ramya Devi.

8.It is respectively submitted that during fitment for deciding the seniority of the candidate against a SC General turn in the Roster both women candidates as well as male candidates are eligible to be fitted as per their Ranking. But against a SC (Women) turn only a woman candidate can be fitted.



9. Therefore, after selecting the candidates in the above manner, while fitting the selected SC candidates in the Roster points provided for them at 6th, 16th, 22nd, 26th and 32nd turn, (for this recruitment the Roster point for 29 vacancies in the post of ADRD commenced from 5th turn and ended at 34th turn. Turn No.1 to 4 were already filled up during the previous / earlier selection/recruitment) Selvi/Tmt. Vembu who has secured the highest mark among the SC candidates can be fitted against the First available SC turn in the roster which is the 6th turn earmarked for SC [Women]. Therefore, any Vacancy caused by her can be filled only by another SC [Women] in the Reserve List and accordingly, the Commission appointed Selvi/Tmt. Kalaivani who was placed in Reserve List – SC [W] 1/1. Selvi/Tmt.Kalaivani would take seniority below all the persons in the main list (i.e) below Tmt/Selvi.Mathumathi.B (Sl.No.29 in the list) in the post of ADRD. The operation of the reserve list is based on the vacancies arising in the roster after fitment. This operation of the reserve list is governed by the G.O.Ms.No.146 P & AR (S) dated 13.09.2006.”

17. Explaining further, on the basis of the said stand taken by the TNPSC, the learned Standing Counsel would submit that, insofar as the selection of Vembu is concerned, though she was selected under the SC



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(General) category, at the time of making the fitment since already till 4th turn it has been exhausted and 5th turn onwards in this selection fitment has to be made and the next available turn for SC candidate from the 5th turn is only the 6th turn, that 6th turn is meant for SC (Women), otherwise the next turn is 16th turn, therefore if the said Vembu who secured the highest mark among the SC candidates is not fit in in the 6th turn and is taken to 16th turn, she will lose the seniority for 10 persons. Therefore a meritorious candidate cannot be pushed back in seniority and as per the procedure which is in vogue, the TNPSC placed the said Vembu in the 6th turn in the fitment. Accordingly, the other candidates have been fit in in the 16th, 22nd, 26th and 32nd turn.

18. When that being so, if the said Vembu did not join and the vacancy is caused, that vacancy as per the fitment is for SC (Women), therefore the one candidate to be selected from the reserve list is naturally from only the SC (Women) candidate and not the SC (General) candidate that is why the 3rd respondent viz., N.C.Kalaivani who secured 379 marks is the first candidate in the SC (Women) reserved list therefore she was selected and sent for appointment, he contended.



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19. We have also heard Mr.T.C.Gopalakrishnan, learned counsel appearing for the 1st respondent and Mr.R.Kumaravel, learned Additional Government Pleader appearing for the 2nd respondent.

20. There has been no representation for the 3rd respondent.

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.



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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.



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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 are specifically earmarked for SC (General), among the SC candidates who are the top meritorious candidates i.e. first 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



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(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.

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 was 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



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which is completely a wrong exercise and not in consonance with the reservation as well as the instructions 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 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.

32. However, insofar as the continuance of the 3rd respondent is concerned, as against the impugned order passed by the learned Judge,



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no appeal has been filed by the 3rd respondent, here also there has been no representation on behalf of the 3rd respondent. Therefore, it is for the Service Commission as well as the appointing authority to take a decision as to whether the 3rd respondent shall be retained or not. Irrespective of that decision, insofar as the 1st respondent Rajesh is concerned, he shall be selected as the 3rd candidate under SC (General) quota in the said Group-I examinations for the selection to the post of Assistant Director of Rural Development and accordingly a revised selection list or additional selection list shall be forwarded by the appellant Service Commission to the State Government, who, on receipt of such list, shall give necessary appointment orders to the 1st respondent Rajesh.

33. The needful, as indicated above, shall be undertaken both by the appellant as well as the 2nd respondent State Government within a period of six weeks from the date of receipt of a copy of this judgment.

34. With these directions and orders, this Writ Appeal is disposed of. However, there shall be no order as to costs.



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35. After completion of this judgment, we are informed by the learned counsel appearing for the 1st respondent that, the 3rd respondent viz., N.C.Kalaivani did not join in the post of Assistant Director of Rural Development, instead she joined in the post of District Employment Officer. If that is the fact, the question of setting aside her selection and appointment to the post of Assistant Director of Rural Development, as directed by the learned Judge in the impugned order, does not arise. This aspect also has to be looked into by the appellant TNPSC and needful action as indicated above shall be undertaken.

(R.S.K., J.)

(K.B., J.)

26.07.2023

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

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To

The Principal Secretary to Government,
Department of Rural Department,
St. George Fort,
Chennai – 600 009.



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

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