



W.A.No.1166 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.1166 of 2021 and

CMP No.7344 of 2021

Tamil Nadu Public Service Commission,
rep. By its Secretary, Frazer Bridge Road,
V.O.C. Nagar, Park town,
Chennai 600 003.

... Appellant

Vs.

1. K.Anandharaj
2. The Commissioner,
Department of Geology and Mining,
Industrial Estate, Guindy,
Chennai-32.
3. The Secretary to Government,
Public Works Department,
Secretariat, Chennai-9.
4. Sreenivasa Rao, Assistant Geologist,
Department of Geology and Mining,
Industrial Estate, Guindy, Chennai-32.



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5. The Secretary to Government,
Department of Geology and Mining,
Secretariat, Chennai-9.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 07.08.2017 in W.P.No.23046 of 2014, as confirmed by order dated 12.12.2019 made in Review Application No.65 of 2018.

For Appellant	: Mr.R.Bharanidharan for Mr.Karthik Rajan
For Respondents	: Mr.M.Ravi for first respondent Mr.E.Vijay Anand, Addl.Govt.Pleader for R 2 and R5 Mr.P.Balathandayuthabani, Spl.Govt.Pleader for third respondent No appearance for fourth respondent

JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Writ Appeal has been filed by the Teachers Recruitment Board to set aside the order passed by the learned Single Judge dated 07.08.2017 in W.P.No.23046 of 2014, as confirmed by order dated 12.12.2019 made in Review Application No.65 of 2018.

2. The brief facts leading to the filing of the present writ appeal is as



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follows.

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The first respondent herein belongs to the Scheduled Caste Community and in pursuant to the Advertisement/Notification No.229 dated 17.02.2010, he applied for recruitment to the post of Assistant Geologist and in the written examination he secured 196.5 marks.

2.1. While applying for the post, the candidates were asked to give their willingness in terms of clause 7 of notification dated 17.02.2010 and accordingly, the petitioner had given preference, as stated below.

1. Code No.1863 – Assistant Geologist in Geology and Mining Dept.
2. Code No.1924- Assistant Geologist in Industries and Commerce Department.
3. Code No.1750 – Assistant Geologist in Ground Water Wing in Public Works Department.

2.2. The fourth respondent, who also belongs to the Scheduled Caste community, had participated in the written examination and secured 162 marks, which is much less than the marks secured by the petitioner. However, in the provisional selection list issued on 20.07.2011, the 4th respondent was selected as an Assistant Geologist in Geology and Mining Department, as per his option as a first choice. Further, the petitioner was



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appointed as Assistant Geologist in the Ground Water Wing of Public Works Department on 30.08.2011. When the petitioner secured more than the marks, as secured by the fourth respondent, he ought to have been appointed in the Geology and Mining Department, as per his first choice. Hence, he gave a representation dated 10.09.2011 to the authorities concerned seeking re-allotment in the Geology and Mining Department, but there was no response from them. Subsequently, on 16.07.2013, appointment order was issued to the fourth respondent appointing him as Assistant Geologist in the said Geology and Mining Department.

2.3. On verification, the petitioner was informed that, the fourth respondent belongs to Aunthathiyar community and as per G.O.Ms.65, Personnel and Administrative Reforms (K) Department dated 27.05.2009, special reservation has been provided for Arunithathiyar Community, within the schedule caste community and hence, by giving preference, he was appointed in the Geology and Mining Department, as per his first choice.

2.4. According to the first respondent/writ petitioner, at the time of arising vacancies and notification issued, there was no policy reservation



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available for Arunthathiyar community, within the scheduled caste community and hence, such special reservation cannot be applied to the fourth respondent for accommodating him in preference to the claim of the petitioner. Therefore, challenging the selection list dated 27.07.2011 and the appointment of the fourth respondent dated 16.07.2013, and also seeking to appoint him as Assistant Geologist in the Geology and Mining Department in the place of the fourth respondent herein, the first respondent /writ petitioner filed the writ petition No.23046/2014. The learned Single Judge, vide order dated 07.08.2017, has allowed the writ petition on the grounds that, i) since the vacancies were arose during the year 2007-2008, are not required to be filled up by applying special reservation; ii) since the rules were amended only vide G.O.Ms.No.55, dated 08.04.2010 and the rules clearly stipulate that the reservation shall be applied only to the vacancies, which arise after 29.04.2008. Challenging the above order, the appellant/Tamil Nadu Public Service Commission has filed a review petition, which was also decided against them. As such, the present writ appeal has been filed by the TNPSC to set aside the order passed in the writ petition, as confirmed in the review petition.



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3. The learned standing counsel for the appellant /Tamil Nadu Public Service Commission submitted that, the vacancies arose in the year 2007-2008, however, the vacancies was notified only on 17.02.2010, vide notification No.229, which means, at the time of issuing notification, G.O.Ms.No.65, dated 27.05.2009 was already in force and hence, following the special reservation and also by giving preference, the fourth respondent was appointed as Assistant Geologist in the Geology and Mining Department, as per his first choice .

3.1. The learned standing counsel further submitted that, on 29.04.2009, Tamil Nadu Arunthathiyars Rules, 2009 (Act 4 of 2009) was framed, in which, roster system pertaining to the reservation seats for Arunthathiyars was revised. To apply the above revised roster, the Government had issued the G.O.Ms.No.65, dated 27.05.2009, providing special reservation to Arunthathiyars, within the reservation for Scheduled Caste Category. In the above Government Order, the government had directed that the roster system as stipulated therein, should be made



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applicable in respect of those selections made by the recruiting agencies and appointments made on or after 29.04.2009.

3.2. He further submitted that, the Government, in their letter No.20635/K2/2009-04, Personnel and Administrative Reforms (K) Department dated 24.06.2009 had clarified that in respect of those vacancies notified by the recruiting agencies on or after 29.04.2009, the revised roster prescribed in the Government Order (G.O Ms.65, dated 27.05.2009) shall be continued. Further, pursuant to G.O.Ms.No.65, dated 27.05.2009, the Government had issued amendments, vide G.O.Ms.No.55, dated 08.04.2010, by inserting the clause Arunthathiyars under Rule 2 in part I Preliminary retrospectively from 29.04.2009.

3.3. The learned standing counsel vehemently argued that, if the intention of the amendment to the Rule is not applied to the vacancies, which arose in the year 2007-2008, as argued by the fourth respondent, then, the legislature would have made it clear that for the vacancies, which arose prior to the enactment of Act 4 of 2009, the roster that was in force prior to



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29.04.2009 will be continued from the last turn, upto which selection was already made till the vacancies for the years prior to 29.04.2009 get satisfied and then the revised Schedule III shall be put into operation for filling up the vacancies that occurred on or after 29.04.2009. He further submitted that it is accepted principle of construction that Statutory Rule or Government order is prospective in nature, unless it is expressly or by necessary implication made to have retrospective effect. Therefore, the Special reservation provided for Arunthathiyars and modified roster ordered in G.O.Ms.No.65, dated 27.05.2009 was followed in the recruitment process and the fourth respondent was appointed as Assistant Geologist in the Geology and Mining Department.

3.4. He also submitted that, in Clause 3-A of the advertisement itself, it was expressed that the rule of reservation of appointments is applicable to each post separately except for the post of Assistant Geologist in Industries and Commerce Department and the distribution of the vacancies will be as per the rule in force. The first respondent, knowing fully about the above informations contained in the notification had participated in the recruitment



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process and hence, he cannot challenge the recruitment process, as he had not obtained appointment as per his first choice. The learned Judge, without taking note of the above facts has erred in allowing writ petition filed by the first respondent and also dismissing the review petition filed by the Department. Therefore, the above impugned orders are liable to be set aside.

4. The learned counsel for the first respondent, making objection to the above submission made by the learned Standing Counsel, submitted that the learned Single Judge, based on the relevant materials, has rightly come to the conclusion, that the vacancies for the posts, as specified in the notification, arose before coming into force the Act 4 of 2009, dated 29.04.2009, which was subsequently clarified by G.O.Ms.No.65, dated 27.05.2009 and amended by G.O.Ms.No.55, dated 08.04.2010. Therefore, the order of the learned Single Judge need not be interfered with.

5. The learned Additional Government Pleader and the learned Special Government Pleader appearing for the Government/R2, R3 and R5 have made their submission, supporting the argument made by the learned



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counsel appearing for the appellant.

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6. Heard the learned counsel for the appellant and the learned counsel for the first respondent and also the Additional Government Pleader and the Special Government Pleader appearing for the respondents 2, 3 and 5.

7. The point for consideration is whether the vacancies, which arose during the year 2007-2008 and notified in Advertisement No.229, dated 17.02.2010, should be filled up, by following the Rules framed on 29.04.2009, vide Act No. 4 of 2009? or not?

8. The undisputed material facts are as follows.

i) The vacancies for the post of Assistant Geologist arose during the year 2007-2008.

ii) In exercise to the Tamil Nadu Arunthathiyars Act, 2009 (Tamil Nadu Act 4 of 2009), the Governor of Tamil Nadu had framed "**Tamil Nadu Arunthathiyars Rules, 2009**" on 29.04.2009, thereby offering reservation to Arunthathiyars on preferential basis, within the reservation available for Scheduled Castes.

iii) Pursuant to the above Act, the earlier roster system prescribed in the G.O.Ms.No.206, dated 06.11.2008 was revised, vide G.O.Ms.No.65, Personnel and Administrative Reforms (K)



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Department, dated 27.05.2009. ***In the above G.O.Ms.No.65, dated 27.05.2009, it was directed that the revised roster shall be made applicable in respect of those selections made by the recruiting agencies and appointments made on or after 29.04.2009.***

iv) In pursuant to the above G.O.Ms.No.65, dated 27.05.2009, the Secretary to Government, Personnel and Administrative Reforms Department, vide letter No.20636/K2/2009-4, dated 24.06.2009 had directed the Public Service, Uniformed Services Recruitment Board, Teachers Recruitment Board and the Special Commissioner and Commissioner of Employment and Training that ***in respect of those vacancies notified by the recruiting agencies on or after 29.04.2009, the revised roster prescribed in the Government Order (G.O.Ms.No.65) shall be continued.*** The above letter also informed that necessary amendments to the General Rules for the Tamil Nadu State and Subordinate Services Rules will be issued separately.

v) The Tamil Nadu Public Service Commission issued an Advertisement/Notification No.229, dated 17.02.2010, inviting applications for direct recruitment to the vacancies for the post of Assistant Geologist in various Departments.

vi) The Government has issued G.O.Ms.No.55, Personnel and Administrative Reforms (S) Department, dated 08.04.2010, thereby amending the Rule 2 of Preliminary and Rule 22, Schedules III, III-B and IV of the General Rules of Tamil Nadu State and Subordinate Services.

9. According to the appellant/ Tamil Nadu public Service



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Commission, though the vacancies for the posts of Assistant Geologist arose during the year 2007-2008, the above vacancies were notified only on 17.02.2010. Therefore, the above **"Tamil Nadu Arunthathiyars Rules, 2009 (Act 4 of 2009)"**, which came into effect from **29.04.2009** was followed in the recruitment process and on preferential basis, the fourth respondent was appointed as Assistant Geologist in the Geology and Mining Department, as per his first choice. Per contra, it is the contention of the first respondent/ writ petitioner that, the vacancies arose on and from 29.04.2009 alone shall be filled up, as per the above Rule and it is not applicable to the vacancies that arose during the year 2007-2008.

10. It is to be noted that, in the Tamil Nadu Arunthathiyars (Special Reservation of seats in Educations Institutions including Private Educational Institutions and of appointments or posts in the Services under the State within the Reservation for the Scheduled castes) Rules, 2009, dated 29.04.2009 (Tamil Nadu Act No.4 of 2009), it has been held thus.

3. Reservation of seats for Arunthathiyars. - In the sixteen per cent of seats offered to Arunthathiyars within the seats reserved for Scheduled Castes for admission in Educational Institutions including Private Educations Institutions and of appointments or posts in the services under the State, the



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first seat shall be offered to Arunthathiyars, as illustrated below.

Illustration

Out of 100 seats, 18 seats are reserved for Scheduled Castes in the following rotation:-

2	32	66
6	36	72
12	42	76
16	52	82
22	56	86
26	62	92

The seats to Arunthathiyars shall be offered in the rotation 2, 32, and 66.

11. Pursuant to the above Tamil Nadu Arunthathiyars Rule, 2009, G.O.(Ms).No.65, dated 27.05.2009 was issued, in which, it is ordered as follows.

3. The Government further direct that ***the roster prescribed in this order shall be made applicable in respect of those selections made by the recruiting agencies and appointments made on or after 29.04.2009.*** However, the recruiting agencies/appointing authorities are informed that the selections/appointments, if any, already made with reference to the 200 point roster prescribed in the Government Orders first, second and third read above (G.O.Ms.No.242, dated 29.10.2007, G.O.Ms.No.101, dated 30.05.2008, G.O.Ms.No.206, dated 6.11.2008) need not be reopened and for further selections/appointments, the revised roster prescribed in this government order shall be continued by the recruiting agencies/appointing authorities from the last turn upto which the selection was already made.

12. Subsequently, necessary amendments to Rule 2 of Preliminary and Rule 22, Schedules III, III-B and IV of the General Rules of Tamil Nadu



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State and Subordinate Services was also made, *vide G.O.Ms.No.55, dated 08.04.2010*, In Schedule-III, 200 point roster is shown and at Sl.No.2, 32, and 66, reservation was provided on preferential basis to the Schedule Caste Arunthathiyars.

13. On perusal of the above said Tamil Nadu Arunthathiyar Rule, 2009 (Tamil Nadu Act 4 of 2009), dated 29.04.2009 and also the government orders in G.O.(Ms.) No.65, dated 27.05.2009 and G.O.(Ms).No.5, dated 08.04.2010, it is clear that, i) the earlier roster system followed in the recruitment process was revised; ii) the appointments or posts, reserved for Scheduled Caste, shall be offered to Arunthathiyars on preferential basis, within the reservation for Scheduled Castes; iii) the Special reservation provided for Arunthathiyars shall be followed in the recruitment process on and from 29.04.2009. Admittedly, the first respondent belonged to Scheduled Caste community and the fourth respondent belonged to Scheduled Caste Arunthathiyar Community.

14. The appellant/ Tamil Nadu Public Service Commission, had



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issued notification/ Advertisement No.229, dated 17.02.2010, inviting the applications for filling up the posts of Assistant Geologist in the Geology and Mining Department, Ground Water Wing in Public Works Department and Industries and Commerce Department; and also for the posts of Junior Chemist, Assistant Tester and Instructor in other Departments. Further, while issuing the above notification, dated 17.02.2010, the Tamil Nadu Arunthathiyars Rules, 2009 dated 29.04.2009 and the G.O.(Ms)No.65, dated 27.05.2009 were came into force. In the above G.O.(Ms) No.65, it is specifically ordered that ***the roster prescribed in this order shall be made applicable in respect of those selections made by the recruiting agencies and appointments made on or after 29.04.2009.*** Following the above government order, the Tamil nadu Public Service Commission has sent a letter dated 05.06.2009 to the Government and requested clarification with regard to the applicability of the above special reservation to the fresh notification, to be issued by the Commission, on or after 29.04.2009. In reply to the same, the Government, vide letter No.20636/K2/2009-4, dated 24.06.2009, had directed that, ***in respect of those vacancies notified by the recruiting agencies on or after 29.04.2009, the revised roster prescribed in***



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the government order (G.O.(Ms).No.65) shall be continued.

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15. In the case on hand, the notification itself was issued only on 17.02.2010. i.e., after issuing of the above G.O.65, dated 27.05.2009, and also the government letter dated 24.06.2009. Subsequently, G.O(Ms).No.55, dated 08.04.2010 was also issued, making necessary amendments to Rule 2 of Preliminary and Rule 22, Schedules III, III-B and IV of the General Rules of Tamil Nadu State and Subordinate Services. Therefore, as per the above government orders, the revised roster system was followed and provisional selection list was issued on 20.07.2011 by giving special reservation to Arunthathiyars on preferential basis and accordingly, the fourth respondent was appointed in the Geology and Mining Department, as per his first choice on 16.07.2013. Therefore, it cannot be said that the fourth respondent was appointed by overlooking the first respondent.

16. Apart from that, in the advertisement/notification dated 17.02.2010 at paragraph No.3 (General information), it has been specifically noted as follows.

3. GENERAL INFORMATION:

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A. The rule of reservation of appointment is applicable to each post separately, except for the post of Assistant Geologist in Industries and Commerce Department and *the distribution of the vacancies will be, as per the rule in force.*

From the above, it is clear that, while issuing the notification itself, it was informed that the rule of reservation of appointment and the distribution of the vacancies will be followed as per the rule in force. However, it is the contention of the first respondent that the vacancies arose during the year 2007-2008 and hence, the revised roster system shall not be followed. The above contention of the first respondent cannot be accepted for the reason that, having accepted the above terms and conditions of the notification, the first respondent applied to the post the Assistant Geologist; appeared for the written examination; participated in the selection process. Further, he was appointed as Assistant Geologist on 30.08.2011 in the Public Works Department under the Schedule Caste quota and he has been working in the above Department.

17. As already discussed, following the rule of reservation and also obeying the Government Orders as stated supra, the appellant/Tamil Nadu



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Public Service Commission has appointed the fourth respondent on preferential basis, since he belongs to Schedule Caste-Arunthathiyar Community. Further, having participated in the selection process, accepting the terms and conditions of the recruitment notification and also after getting appointment as Assistant Geologist in the Public Works Department under Scheduled Caste quota on 30.08.2011, the first respondent cannot challenge the selection list issued by the Tamil Nadu Public Service Commission, dated 20.07.2011 and also the appointment order dated 16.07.2013 issued in favour of the fourth respondent. Therefore, we are of the view that the order passed by the learned Single Judge in the writ petition as well as the review application are liable to be set aside.

18. Accordingly, this writ appeal is allowed and the impugned order passed by the learned Single Judge in the writ petition as well as the review petition are set aside. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(K.B.J.)

29.04.2024



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Internet: Yes/No

Index : Yes/No

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To

1. The Secretary to Government,
Department of Geology and Mining,
Secretariat, Chennai-9.
2. The Secretary to Government,
Public Works Department, Secretariat, Chennai-9.
3. The Commissioner,
Department of Geology and Mining,
Industrial Estate, Guindy, Chennai-32.
4. The Assistant Geologist,
Department of Geology and Mining,
Industrial Estate, Guindy, Chennai-32.



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