



Writ Petition No.3481 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.3481 of 2023
and W.M.P.Nos.3539 & 5501 of 2023**

The Secretary,
Union Public Service Commission,
Dholphur House, Shahjahan Road,
New Delhi – 110 069.

... Petitioner

Vs

- 1.C.K.Kalaiselvi
- 2.Union of India,
Through Secretary,
Ministry of Commerce & Industry,
Udyog Bhavan, New Delhi – 110 107.
- 3.The Controller General of Patent,
Design & Trade Marks,
The Department for Promotion of Industry
and Internal Trade,
Ministry of Commerce and Industry,
Baudhik Sampada Bhavan,
S.M.Road, Next to Antop Hill Post Office,
Antop Hill, Wadala, Mumbai – 400 037.
- 4.The Registrar,



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Central Administrative Tribunal, Madras Bench,
High Court Buildings, Chennai – 600 104.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the order of the Central Administrative Tribunal, Madras Bench passed in O.A.No.227 of 2020 dated 17.10.2022 and quash the same and pass further orders.

For Petitioner: Dr.M.Devedran

For R1 : Mr.K.M.Ramesh
Senior Counsel
for Mr.G.Mohammed Aseef

For R2 : Mr.Venkataswamy Babu
SPC

For R3 : Not ready in notice – no appearance

For R4 : Tribunal

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Writ Petition had been filed by the petitioner challenging the order of the Central Administrative Tribunal, wherein, a direction has been issued to the petitioner to consider the request of the first respondent by taking appropriate steps for releasing the name of the respondent and recommend the same positively to the respondents 2 and 3 herein and a further direction to the respondents 2 and 3 to issue offer of appointment to



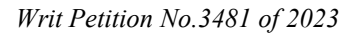
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the first appellant.

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2. Heard Dr.M.Devedran, learned counsel for the petitioner, Mr.K.M.Ramesh, learned Senior Counsel for Mr.G.Mohammed Aseef, learned counsel for the first respondent and Mr.Venkataswamy Babu, learned Senior Panel Counsel appearing on behalf of the second respondent.

3. The learned counsel for the petitioner would submit that the petitioner had issued an advertisement in the year 2016 inviting applications for filling up of vacancies in various Departments including 58 post for Examiner of Trade Mark & Geographical Indication in the Office of the third respondent herein. Pursuant to the said recruitment process, the Interview Board Report (hereinafter referred to as IBR) were finalised on 04.05.2017. He would submit that the first respondent herein had also participated in the recruitment process and after various posts were filled up, the first respondent was kept in the reserved list. He would submit that the reserved list will be in operation firstly for a period of 18 months from the finalisation of the IBR under normal circumstances and in an



4. He would submit that the first respondent belonged to the ST category and in that category originally one Mrs.Vidyawatikumari's name had been recommended and an offer of appointment was sent to the said candidate. Due to the non-joining of the said candidate, the second respondent herein by its communication dated 13.12.2018 requested the petitioner to nominate 7 names in view of the reasons assigned against the candidates who had already been recommended for appointment. He would submit that in respect of 4 persons, it had been indicated that they had declined and resigned. In respect of one candidate, it had been indicated that on non-joining, the candidate had died. However, in respect of two candidates, the reason given was that they had refused to join.



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5. He would submit that in view of the guidelines framed for operation of the reserved list, he would submit that only 5 names were recommended for the categories resigned and died as on the date of the said letter of the Government as per the norms of the operation of the reserved list by application of Clause (b), as it stood, then it would only be in operation. As regards to the categories “refused to join”, since, it was not covered under the clause (b) it could only be deemed to have been covered under Clause (a). Since, in the present case, the IBR was finalised on 04.05.2017, in normal circumstances the operation of the IBR would only for a period of 18 months which would have expired on 03.11.2018. For the other categories namely “resigned” and “died”, the IBR would operate for two years and in such categories, the IBR would be operateable till 03.05.2019. Hence, out of 7 names sought for, only 5 names had been recommended. However, restructuring the norms, even the candidates who had not joined were directed to be considered to be along other reasons under Clause (b). Therefore, considering the fact that a request had been made by the second respondent withing the said period of two years, two more names have been recommended by the petitioner on 09.09.2019.



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However, it is the claim of the first respondent that one Mr.Rajesh Kumar, who was recommended by the petitioner under ST category had failed to join the Department. Hence, the first respondent being the next in-line would be entitled to be recommended in the place of the said Rajesh Kumar.

6. The first respondent had submitted a representation on 18.11.2019 requesting the petitioner to release her name from the reserved list on the ground that the said Rajesh Kumar who was recommended earlier had not joined the post. As the reserved list itself had expired as per the norms, the claim of the first respondent was rejected. Aggrieved against the same, the first respondent had approached the Tribunal.

7. He would further submit that the petitioner had placed all the aforesaid facts before the Tribunal and sought for dismissal of the O.A. But, however, the Tribunal without considering the relevant facts, had set aside the rejection order passed by the petitioner and had directed the petitioner to positively recommend the name of the first respondent with a further direction to the second and third respondents to grant appointment to the



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first respondent.

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8. He would submit that the Tribunal on the presumption that the petitioner had relaxed the Rule in favour of the two individuals including Rajesh Kumar in whose place the first respondent is seeking appointment had held that the petitioner was wrong in rejecting the case of the first respondent. According to him, it had held that the relaxation given to the two individuals would also have to be extended to the first respondent and operate reserved list. He would further submit that there was no relaxation in the norms that was made in favour of the two individuals while recommending their names on 09.09.2019. He would further submit that the request had been made by the second respondent much before the expiry of the operation of the reserved list and only in view of the extension of the term, many other reasons also to include the persons who have joined, the recommendations were made. He would submit that the second respondent had not made any request to suggest or recommend names in view of the vacancy that arose for consideration due to the non-joining of the said Rajesh Kumar, whose name was recommended on 09.09.2019. Since, there



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was no relaxation when the list dated 09.09.2019 was sent, the Tribunal had committed an error in holding that similar relaxation ought to have been given to the first respondent also. In that context, he would seek interference of the order passed by the Tribunal.

9. Mr.Venkataswamy Babu, learned Standing Counsel appearing on behalf of the second respondent would also support the submissions made by the learned counsel for the petitioner.

10. He would further submit that when as per the norms, the reserved list would lose its effect at the maximum at the end of two years from the date of finalisation of the IBR. He would submit that in this case, the IBR was finalised on 04.05.2017 and at any cost, it would expire on 03.05.2019 which is the maximum time till which it can be under operation as per the norms. Since the request was not prior to the expiry of the period and due to the wrong understanding of the petitioner, it had not sent any recommendation for two vacancies. It had also not rejected the request in respect of the said two vacancies which arose out of non-joining of the



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recommended candidates. However, when the petitioner had finally understood that the other reasons would also include the vacancy that arose out of non-joining of the recommended candidates and since, the request of the second respondent was still pending, the petitioner had recommended two names who have also been given appointment. Unfortunately, the said Rajesh Kumar had not joined duty and therefore, the said post fell vacant. Since, the reserved list had already expired, the second respondent did not make any further request to the petitioner nor did the first respondent approached the second and third respondents making a request to seek recommendation from the petitioner. Therefore, he would submit that the order passed by the Tribunal cannot be sustained.

11. Countering their arguments, Mr.K.M.Ramesh, learned Senior Counsel appearing for the first respondent would submit that it is not the case of the petitioner nor the second and third respondents that the list had been in operation even subsequent to 03.05.2019, when the reserved list had expired on 03.05.2019 there was no business for them to operate except to relax the norms and make recommendations. It is also not disputed that on



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09.09.2019, two names have been recommended by the petitioner to the second respondent and the second respondent has also acted upon the said recommendation. This would only pre-suppose that the reserved list was kept operational by the petitioner till the vacancies were fell down. Therefore, a similar treatment should also be extended to the candidature of the first respondent, as the one Rajesh Kumar, who was recommended under ST category had refused to join duty. He would further submit that the first respondent had been appointed as an Examiner on contract basis and also belonged to the ST category and therefore, the relaxation given on 09.09.2019, if extended it could only be beneficial to the Department and therefore, he would submit that there is no error or infirmity in the order passed by the Tribunal warranting our interference.

12. We have examined the arguments, made by the respective counsels and the norms which relate to the period till which the reserved list would be in operation.

13. The norms relating to the validity of the reservation list was firstly



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for 18 months from the finalisation of the IBR in normal circumstances.

However, in exceptional circumstances, the period of operation was for two years from the finalisation of the IBR. The reason for such a longer period was because of the reasons of a candidate who had not joined and resigned or died. The reasons for operating the reserved list under exceptional circumstances was extended to include even the non-joining of a recommended candidate. In the present case, it is not disputed that the IBR was finalised on 04.05.2017. Therefore, under normal circumstances, the IBR should be operational till 03.11.2018 and in exceptional circumstances, the same would be operational till 03.05.2019. The clarification of including the candidates who have not joined to the other reason under Clause (b) of the norms was made on 29.08.2019. It is an admitted case by the petitioner that when initially by a communication dated 13.12.2018, the second respondent had sought recommendation for 7 names for the reasons given against each of the candidates, the petitioner had only recommended 5 names. When queried as to why it had not recommended 2 names as sought for, the answer was in the affirmative that since two of the candidates were the persons who had not joined and who do not fall within the other norms,



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their names were not recommended. On 03.05.2019 the reserved list also expired and became unoperational in view of the period of 24 months being over from the initial dated of the IBR. This is not disputed by anyone.

14. A decision was taken by the petitioner in expanding other reasons in Clause (b) of the instructions to include even the vacancies that arose due to non-joining under the exceptional circumstances. This modification to the instructions which was made on 29.08.2019 could only be operated in the prospective recruitment for maintaining the reserved list. Admittedly, the reserved list had expired on 03.05.2019 and the conduct of the petitioner in recommending two names on the basis of the request that has been made prior to the expiry would only suggest that they have unilaterally extended the operational validity of the reserved list without prescribing the future expiry. Therefore, the first respondent's claim also ought to have been considered as per her request. It is not the case of the second and third respondents that they would be prejudiced if such appointment will be granted to the first respondent, all that they would claim is that if such a view is taken, it would open the flood gates for the people to seek extension



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of the norms in operating the reserved list for a longer period. We are conscious of the said fact. We make it clear that this order has been made in view that we have given a specific finding that it was because of the reason of operating the reserved list after its expiry, this order is being made. We hope, that such a mistake is not carried out by the petitioner in future and abide by itself the norms/ instructions which it had framed.

15. For the foregoing reasons, we do not find any reasons to interfere with the impugned order made by the Tribunal since, the time granted by the Tribunal had already expired, we direct the petitioner and the second respondent to comply with the direction given by the Tribunal within a period of eight (8) weeks from the date of receipt of a copy of this order.

16. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No

Speaking Order/Non Speaking Order

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Neutral Citation: Yes/No
gba

To

1. The Secretary,
for Union of India,
Ministry of Commerce & Industry,
Udyog Bhavan, New Delhi – 110 107.
2. The Controller General of Patent,
Design & Trade Marks,
The Department for Promotion of Industry
and Internal Trade,
Ministry of Commerce and Industry,
Baudhik Sampada Bhavan,
S.M.Road, Next to Antop Hill Post Office,
Antop Hill, Wadala, Mumbai – 400 037.

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3. The Registrar,
Central Administrative Tribunal,
Madras Bench, High Court Buildings,
Chennai – 600 104.



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

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