



W.P. No.22744 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM :

**THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.22744 of 2012

and

M.P.No.1 of 2012 & W.M.P.No.4418 of 2018

B.Mohan

... Petitioner

Vs.

1.The Secretary,
Tamil Nadu Public Service Commission,
Chennai – 600 002.

2.The Director,
Department of Fire and Rescue Service,
No.17, Rukmini Laxmipathy Road,
Egmore, Chennai – 600 008.

3.The Secretary,
Personal and Administrative Reforms Department,
Secretariat,
Chennai – 9.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records of the order passed by the 1st respondent in Memo No.6667/OTD-C1/2007 dated 23.01.2012 and quash the same and further directing the 1st respondent to select the petitioner to the post of Divisional Fire Officer in the 2nd



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respondent department or any other post which is included under 8 categories in Group I services by operating the reserve list 2006-2007 through sliding up and consequential vacancy basis and for consequential direction directing the 2nd respondent to appoint the petitioner in the post Divisional Fire Officer in his department which is included in Group I Services 2006-2007.

For Petitioner : Mr.T.Selvan
For R1 : Mr.I.Abrar mohammed Abdullah
For R2 : Mr.S.Arumugam
Government Advocate.

ORDER

The petitioner herein participated in the recruitment process initiated by the 1st respondent for filling up the post of Divisional Officer, in Tamil Nadu Fire and Rescue Services, in Group 1 Services examination conducted by TNPSC and the petitioner herein was included in the reserve list at Serial No.1 for the said post. The said selection process was subject matter of litigation before this Court and finally the selected candidates were issued appointment orders. However, one of the candidate selected for the post in question did not appear for medical examination, and consequently his appointment was cancelled by the respondents and accordingly, a communication dated 25.01.2010 was sent to the 1st respondent intimating about the cancellation of the selection of the candidate namely,



Thiru.S.Senthilkumar. It is by virtue of the said cancellation of the appointment of S.Senthilkumar, the petitioner making his claim for being appointed to the said post of Divisional Officer in Tamil Nadu Fire and Rescue Services on the ground that, he being the candidate enlisted at Serial No.1 in the reserved list is entitled for being appointed to the said post. Making the claim as such, the petitioner along with several others approached this Court, on an earlier occasion, by filing W.P.No.26313 of 2009. The said writ petition was disposed of by coordinate bench of this Court, by common order, dated 05.02.2010 with the following directions:

“13. In view of the above discussions, the issues raised in the present writ petitions are answered in the following terms:-

i) The reserve list which was prepared by the TNPSC in respect of the selection conducted during 2006-2007 for various posts in Group-I services would not remain valid after the publication of the results of the subsequent selection for the years 2007-2008 and 2008-2009, in view of the specific embargo provided under Rule 15-A of the Tamil Nadu State and Subordinate Service Rules, which states that the reserve list shall be in force until the regular list is drawn up subsequently. The vacancies that are intimated to the Government as on the date of publication of the list of candidates of Group-I services Examination for the years 2007-2008 and 2008-2009 shall be taken into account for



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the purpose of accommodating them in the eight category of posts in Group-I Services Examination for the year 2006-2007 on account of non-joining, resignation or cancellation of selection of candidates by the TNPSC.

iii)The reserve list shall be prepared in the manner as done by the TNPSC by including the name of the candidates as per the option given by them, since the selection is based on "sliding" method. This is more so, because a single examination is conducted for various categories of posts in Group - I Services and all candidates, who took up the examination, have given their option and therefore, there is no error in the manner in which the TNPSC has prepared the reserve list for the selection conducted during 2006-2007.

v)The waiting list cannot be treated as a source of recruitment as held by the Hon'ble Supreme Court of India and the candidate in the waiting list in the order of merit has a right to claim that he may be appointed, if one or the other selected candidate does not join. But once the selected candidates join and no vacancy arises due to resignation or for any other reason within the period the list is to operate under the Rules, then the candidate from the waiting list has no right to claim appointment to any future vacancy, which may arise unless the selection is held for it."



2. As the 1st respondent has not taken any further action, the petitioner, after having submitted a representation dated 23.11.2009, approached this Court by filing W.P.No.2848 of 2011 complaining against the non-consideration of the said representation. In the said writ petition, the 1st respondent filed counter affidavit stating that the intimation pertaining to non-joining of Thiru.S.SenthilKumar was communicated to the 1st respondent through Letter dated 25.01.2010, but the said Letter was received by the 1st respondent only on 08.02.2010, and in the meanwhile, the selected list for the subsequent years namely 2007-2008 and 2008-2009 was published by the 1st respondent on 05.02.2010.

3. Thus, it is contended that the reserved list stood lapsed by operation of law on publication of selected list for the subsequent years i.e., 2007-2008 on 05.02.2008. But a co-ordinate bench of this Court, having taken note of the contentions raised by the 1st respondent, as early as in the year 2011 itself, and considering the relief sought in the said W.P.No.2848 of 2011, disposed of the matter directing the 1st respondent Tamil Nadu Public Service Commission (TNPSC) to consider the representation submitted by the petitioner and to pass orders thereon.



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4. It is pursuant to the said order passed by this Court, the 1st respondent issued Memo No.6667/OTD-C1/2007, dated 23.01.2012 rejecting the claim of the petitioner on the ground that the reserved list that was drawn pursuant to the recruitment process undertaken for the year 2006-2007 had lapsed on publication of the selected list for the subsequent year 2007-2008 and 2008-2009, which were published on 05.02.2010. It is aggrieved by the said order, the petitioner approached this Court by filing the present writ petition.

5. Heard Mr.T.Selvan, learned counsel for the petitioner and Mr.I.Abrar mohammed Abdullah for the 1st respondent and Mr.S.Arumugam, learned Government Advocate for the 2nd and 3rd respondents.

6. The learned counsel for the petitioner strenuously contended that the vacancy in question in the post of Divisional Officer in Tamil Nadu Fire and Rescue Services had occurred as a result of non-joining of S.Senthilkumar, who was selected earlier, and the same was communicated to the 1st respondent through Letter dated 25.01.2010, but because of the delay



in receiving such communication by the 1st respondent, the right of the petitioner to claim for appointment in the said vacancy being the first candidate in the reserved list is frustrated and therefore, the petitioner cannot be held responsible for the delay in communication about the vacancy to the 1st respondent by the respondents 2 and 3. Thus, it is contended that, for no fault of the petitioner, he cannot be punished and he cannot be deprived of his rightful claim for appointment to the post in question.

7. On the other hand Mr.I.Abrar Mohammed Abdullah, learned counsel appearing for the 1st respondent contended that the 1st respondent is under obligation to strictly act upon in terms of the Rules and accordingly, the 1st respondent has published the list of selected candidates for the year 2007-2008 on 05.02.2010 immediately after disposal of W.P.No.26313 of 2009 and batch, by order dated 05.02.2010, and the said list of selected candidates was published in the newspaper on 07.02.2010. Thus, it is contended that, on the publication of selected list for the year 2007-2008, the reserved list that was operated in respect of the recruitment process undertaken for the year 2006-2007 has lapsed and therefore, the question of considering the claim of the petitioner for being appointed to the post in question by taking into



consideration the reserved list does not arise.

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8. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

9. The very same issue has come up for consideration before this Court on an earlier occasion in writ petition filed by the petitioner in W.P.No.26313 of 2009 and batch, and this Court, by an order dated 05.02.2010 disposed of the said batch of writ petitions with certain directions. One such direction is that the vacancies that are intimated by the Government as on the date of publication of the list of selected candidates of Group-1 services examination for the year 2007-2008 and 2008-2009 shall be taken into account for the purpose of accommodating the candidates included in the reserved list for the year 2006-2007 on account of non-joining, resignation or cancellation of selection of the candidates by the TNPSC. Here, the relevant consideration is as to when the intimation is received by the 1st respondent TNPSC. In the instant case, such intimation was admittedly received by the 1st respondent only on 08.02.2010 and whereas, the list of selected candidates for the year 2007-2008 was published on 05.02.2010. No doubt, though it

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was through a communication dated 25.01.2010, the same was admittedly received by the 1st respondent only on 08.02.2010. Such a plea was already taken by the 1st respondent as early as in the year 2011 in the form of a counter affidavit filed in W.P.No.2848 of 2011, and the said fact was also taken note by this Court while disposing of the said writ petition.

10. The petitioner is also fully aware of the said fact as early as in the year 2011. Having been fully aware of the said contention taken by the 1st respondent in the counter affidavit filed in W.P.No.2848 of 2011, the petitioner at the relevant point of time instead of inviting the decision of this Court on merits only confined the relief to the extent of consideration of the representation of the petitioner. Hence, the claim of the respondent TNPSC that the said communication was received by it only on 08.02.2010 cannot be disputed. Once it is admitted that the communication was received by the respondent TNPSC only on 08.02.2010 i.e., after publication of list of selected candidates for the year 2007-2008, by operation of law in terms of Rule 2 of Part 1 of the Tamil Nadu State and Subordinate Service Rules, the reserved list stood lapsed and hence, the question of considering the claim of the petitioner for being appointed to the non-joining post does not arise. That



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is what is informed to the petitioner through the impugned order. Hence, this Court does not find any error or illegality in the impugned order passed by the 1st respondent.

11. Accordingly, this writ petition is dismissed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

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