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W.P.Nos.9667 of 2024, etc. and Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.Nos.9667, 11171, 14377, 14812, 16921, 17115, 17487, 17551
& 18465 of 2024

and

W.M.P.Nos.10694 to 10698, 12242, 12243, 21335, 15619,
15622, 20705, 16047, 16048, 18621, 18624, 18625,
18883 to 18885, 19275, 19277, 19278 & 19336 of 2024

W.P.No.9667 of 2024:

- 1.B.Varalakshmi
- 2.S.Anjane Vasam
- 3.B.Gharishma
- 4.R.Karthikeyan
- 5.S.Swetha
- 6.M.Revathi
- 7.M.J.Sadhana Chudarvizhi
- 8.P.Abinesh Karthik
- 9.M.Punnagai

... Petitioners

Vs.

- 1.The State of Tamil Nadu,



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Represented by its Additional Chief Secretary to Government,
Home (Courts-I) Department,
Fort St. George, Chennai – 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Tamil Nadu Public Service Commission Road,
VOC Nagar, Chennai – 600 003.

3.The Secretary,
Human Resources Management Department,
Secretariat,
Chennai – 600 009.

4.The Registrar General,
High Court of Judicature at Madras,
High Court Buildings,
Chennai – 600 104.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned provisional revised list published by the 2nd respondent dated 19.03.2024 and quash the same and consequently direct the respondents to prepare the selection list per the Advertisement No.661, Notification No: 12/2023 dated 01.06.2023.

For Petitioners : Mr.V.Raghavachari
Senior Counsel
For M/s.P.V.Law Associates

For R1 & R3 : Mr.P.S.Raman
Advocate General
Assisted by Mr.S.John J.Raja Singh
Additional Government Pleader



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For R2 : Mr.R.Bharanidharan
Standing Counsel
[For TNPSC]

For R3 : Ms.C.N.G.Niraimathi

For R4 : Mr.B.Vijay

COMMON ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The batch of cases on hand have been instituted questioning the validity of the Revised Selection List published by the Tamil Nadu Public Service Commission [hereinafter referred as 'TNPSC'], pursuant to the judgment of this Court dated 27.02.2024 in WP Nos.5105, 4430, 4431 and 4518 of 2024 and the order dated 07.03.2024 passed in Review Application Nos.50, 51 and 52 of 2024.

2. TNPSC issued Recruitment Notification vide its advertisement No.661 vide Notification No.12 of 2023, inviting applications from candidates through online mode for direct recruitment to the post of Civil Judge in Tamil Nadu State Judicial Service. 245 posts are notified, including



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92 carried forward vacancies. Preliminary examinations were conducted on 19.08.2023. As per the Recruitment Rules, 2450 candidates were called upon to participate in the Main Examination, which was conducted on 4th and 5th November, 2023. Viva voce test was conducted between 29.01.2024 and 10.02.2024. Provisional Selection List was published by Tamil Nadu Public Service Commission on 16.02.2024.

3. Challenging the said Provisional Selection List, W.P.No.5105 of 2024 was filed mainly on the ground that the application of Rule 27(f) of the Tamil Nadu Government Servants Conditions of Service Act, 2016 [hereinafter referred to as the 'Act', in short] was erroneously adopted by TNPSC. Therefore, suitable directions are to be issued to redo the exercise in consonance with Section 27(f) of the Act, based on the ratio laid down by the Hon'ble Supreme Court of India in the case of *State of Tamil Nadu and Others vs. K. Shobana and Others*¹. The writ petition was allowed by this Court on 27.02.2024, applying the ratio laid down by the Hon'ble Three Judges Bench of the Supreme Court of India in the case of *Shobana* cited supra. Special Leave Petitions were filed challenging the said judgment and it was withdrawn by the petitioners, on the ground that they may be granted

¹ [(2021) 4 SCC 686]



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liberty to challenge the Revised Selection List published by Tamil Nadu Public Service Commission pursuant to the judgment of this Court dated 27.02.2024 in W.P.Nos.5105, 4430, 4431 and 4518 of 2024. Meanwhile, Review Application Nos.50, 51 and 52 of 2024 were filed. The ground raised by the third party review applicants were considered by this Court elaborately and the Review Applications were dismissed on 07.03.2024.

4. Admittedly, no SLP has been filed against the order passed in the Review Applications. The issues reached finality before the High Court. The Revised Selection List published by TNPSC pursuant to the judgment delivered in writ petition on 27.02.2024 is again under challenge before this Court in the present writ petitions by the candidates, who were excluded from the Provisional Selection List, consequent to the judgment of this Court dated 27.02.2024.

5. Apart from the candidates participated in the selection process, few persons who have not even participated in the selection process also filed impleading petitions on the ground that they have planned to participate in the ensuing recruitment process. We are not inclined to entertain the claims



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of those candidates, who have not participated in the selection process, since they cannot be construed as aggrieved persons.

6. Accordingly, the Final Revised Selection List published by Tamil Nadu Public Service Commission on 19.03.2024 was communicated to the Government and the order of appointment is yet to be issued by the Appointing Authority.

7. The learned Advocate General would submit that the files are pending before the Hon'ble Governor and on approval, the order of appointment will be issued without.

8. Mr.N.Subramanian, learned counsel appearing on behalf of the candidates, who have not participated in the selection process articulated his case mainly on the ground that the interpretation given by the Hon'ble Supreme Court of India in the case of **Shobana** cited supra is *per incuriam*. The very same counsel raised the very same ground during the first round of litigation and we have clearly made an observation that such an argument before the High Court would be improper, since the judgment of Three



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Judges Bench of the Hon'ble Supreme Court of India interpreted Section 27(f) of the Act, which is binding on the High Court.

9. Despite the fact that the said arguments are placed at the first instance during the first round of litigation, the very same grounds are reiterated. Therefore, we are not inclined to consider those grounds, which were already considered by this Court in the judgment delivered on 27.02.2024 in W.P.Nos.5105, 4430, 4431 and 4518 of 2024. That apart, further grounds raised by the third party review applicants were also considered and the Review Applications were dismissed by this Court by order dated 07.03.2024.

10. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the writ petitioners, would reiterate that the application of Reservation Rules are improperly made and the interpretation given by this Court in the order dated 27.02.2024, is not in consonance with the spirit of the provisions of the Act. Therefore, the ratio laid down by this Court, is necessarily to be revisited.



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11. Arguments are placed relating to Rule of Reservation and several judgments are cited. We are of the considered opinion that all those judgments relating to reservation would have no application with reference to the facts of the present cases, since the limited point raised is about interpretation and application of Section 27(f) [Third Proviso] to the Act. Since the Three Judges Bench of the Hon'ble Supreme Court of India interpreted the said provision in clear terms, this Court by following the same, delivered judgment and Review Applications filed subsequently, were also dismissed. Thus, the issues reached finality.

12. Re-adjudication of those issues are impermissible by instituting re-litigations.

13. The learned Advocate General in this context, would submit that the issues raised between the parties reached finality. The judgment of the High Court delivered on 27.02.2024 was accepted by TNPSC and the High Court and implemented in all respects by publishing the Revised Provisional Selection List. The judgment in Review Applications has not been challenged and reached finality. Thus, re-litigation is impermissible. More



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so, the very same 16 candidates, who were excluded from the Provisional Selection List, filed the present Writ Petitions raising identical grounds, which deserves no merit consideration.

14. The main contention is that the interpretation and the ratio laid down by the Hon'ble Supreme Court of India in the case of ***Shobana*** cited supra need not be applied. The Third Proviso to Section 27(f) of the Service Conditions Act, stipulates that the backlog vacancies are to be filled up at the first instance. Therefore, the first Provisional Selection List published is the right way of implementing Section 27(f) Third Proviso.

15. The learned Advocate General in reply would oppose by stating that it is impermissible on the part of the writ petitioners to contend that the judgment of the Hon'ble Supreme Court, is *per incuriam*. Beyond that the law laid down is in consonance with the constitutional principles, more specifically, Article 16(4) and 16(4B) of the Constitution of India. Therefore, by way of re-litigation, the writ petitioners cannot re-adjudicate the principles already considered by this Court.



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16. In this context, the learned Advocate General would urge this Court to apply the doctrine of constructive *res judicata*.

17. To substantiate the said doctrine, the Three Judges Bench of the Hon'ble Supreme Court of India in the case of ***State of Karnataka and Another vs. All India Manufacturers Organisation and Others***², held as follows:

“32. Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim nemo debet bis vexari pro una et eadem causa (no one ought to be twice vexed for one and the same cause [P. Ramanatha Aiyer: Advanced Law Lexicon, (Vol. 3, 3rd Edn., 2005) at p. 3170]) and second, public policy that there ought to be an end to the same litigation [Mulla: Code of Civil Procedure, (Vol. 1, 15th Edn., 1995) at p. 94] . It is well settled that Section 11 of the Civil Procedure Code, 1908 (hereinafter “CPC”) is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the section is

2 [(2006) 4 SCC 683]



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not to be considered exhaustive of the general principle of law [See Kalipada De v. Dwijapada Das, (1929-1930) 57 IA 24 : AIR 1930 PC 22 at p. 23] . The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again. Section 11 CPC recognises this principle and forbids a court from trying any suit or issue, which is res judicata, recognising both “cause of action estoppel” and “issue estoppel”. There are two issues that we need to consider, one, whether the doctrine of res judicata, as a matter of principle, can be applied to public interest litigations and second, whether the issues and findings in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] constitute res judicata for the present litigation.”

“37. Further, Explanation IV to Section 11, states:

“Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to



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have been a matter directly and substantially in issue in such suit.”

“40. The judgment in Greenhalgh [(1947) 2 All ER 255 (CA)] was approvingly referred to by this Court in State of U.P. v. Nawab Hussain [(1977) 2 SCC 806 at p. 809, para 4 : 1977 SCC (L&S) 362] . Combining all these principles, a Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] expounded on the principle laid down in Forward Construction Co. [(1986) 1 SCC 100] by holding that:

“[A]n adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had (sic) decided as incidental to or essentially connected with (sic) subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive res judicata underlying Explanation IV of Section



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11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of res judicata.” [Ibid., at p. 741, para 35, per L.M. Sharma, J.J.]”

18. Regarding the re-litigation policy, the Apex Court in the case of ***K.K. Modi vs. K.N. Modi***³, held as under:

“42. Under Order 6 Rule 16, the court may, at any stage of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the Code of Civil Procedure, (15th Edn., Vol. II, p. 1179, note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of

³ [(1998) 3 SCC 573]



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the process of the court on the basis of what is stated in the plaint.

43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase “abuse of the process of the court” thus:

“This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”

19. In the case of **K.K.Modi** cited supra, the Hon'ble Supreme Court in unequivocal terms held that it is an abuse of process of Court and contrary to justice and public policy for a party to re-litigate the same issue, which has already been tried and decided earlier against him. The re-agitation may or



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may not be barred as *res judicata*. In the present case, though it is barred as *res judicata*, it becomes unnecessary for this Court to re-adjudicate the issues, since the judgment of this Court in writ petition dated 27.02.2024 and the order passed in Review Application dated 07.03.2024 were accepted and implemented by Tamil Nadu Public Service Commission and the High Court and the Revised Provisional Seniority List was published and communicated to the Appointing Authority for issuance of appointment orders.

20. In the case of ***M. Venkateswarlu and Others vs. Government of Andhra Pradesh and Others***⁴, the Hon'le Supreme Court dealt with the procedures to be followed to fill up the backlog vacancies, wherein in paragraph-10, it has been held as under:

“10. In this case, the appellant fell short of five months' service for purpose of period of two years as a Senior Assistant and of one year and five months for purpose of total service of eight years in the Revenue Department. In view of the huge backlog of reserved vacancies on account of non-availability of Scheduled Caste/Scheduled Tribe candidates, the Government appears to have intended to relieve the injustice to the appellant by

4 [(1996) 5 SCC 167]



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21. In the earlier round of litigation, this Court has considered the spirit of Section 27(f) Third Proviso and its application with reference to the ratio laid down by the Hon'ble Supreme Court in the case of **Shobana** cited supra. The Apex Court in **Shobana's** case considered the earlier judgments of the Hon'ble Supreme Court. This Court in paragraph 12 of the judgment dated 27.02.2024 reiterated *“At what stage the application of the “first” principle would apply. Section 27 deals with the reservation. It has nothing to do with the general candidates list/general turn vacancies. Such of the candidates who have made it on their own merit albeit, from the reserve category, have not sought the benefit of the reservation. Thus, Section 27 of the Act would have nothing to do up to that point. **Section 27 would apply only when the reservation principles begins, which is after filling up of the seats on merit.** Thus, the word “first” would apply at that stage i.e. the backlog vacancies have to be filled in first and the current vacancies are to be filled in thereafter. At the stage when the general category seats are being filled, there is thus, no question of any carry forward or current vacancies for reserved categories arising at all.”*



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22. The First Selection List, which was quashed by this Court by judgment dated 27.02.2024 was issued by TNPSC by wrongly interpreting the scope of Section 27(f) Third Proviso of the Act. Consequently, top rank holders were accommodated erroneously in the reserved category posts, which resulted in offending the Constitutional Philosophy of social justice. The methodology adopted by TNPSC was found to be violative of Section 27(f) Third Proviso of the Act and as interpreted by the Hon'ble Supreme Court of India. Erroneous placing of the candidates under the General Category and Reserved Category resulted in denial of opportunity to other candidates entitled for inclusion of their names either under the General Category or under the Reserved Category based on the merit ranking.

23. In judgment dated 27.02.2024, this Court has applied the principles laid down by the Three Judges Bench of the Hon'ble Supreme Court of India and directed the TNPSC to redo the exercise by applying the ratio laid down by the Hon'ble Supreme Court and this Court in judgment dated 27.02.2024. Accordingly, Revised Provisional Selection List was published. The Review Applications filed by the third parties also has been dealt with by this Court with reference to the grounds raised and dismissed.



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The said order became final and no Special Leave Petition has been filed.

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24. All the respective learned Senior Counsels and the learned counsels appearing on behalf of the writ petitioners have raised identical grounds in the writ petitions. Some of the grounds raised are unconnected with the issues relating to the publication of Revised Provisional Selection List. Those issues deserve no further consideration.

25. We are called upon to test the correctness of the Revised Provisional Selection List published by the TNPSC pursuant to the judgment of this Court dated 27.02.2024 and the order passed in Review Application on 07.03.2024. As rightly contended by the learned Advocate General, the writ petitions are re-litigations. Therefore, re-adjudication of adjudicated issues need not be undertaken. The litigations are barred under the principles of constructive *res judicata*. Therefore, re-adjudication based on certain other irrelevant grounds became unnecessary.

26. Mr.B.Vijay, learned counsel appearing on behalf of the High Court of Madras would submit that this Court was called upon to test the



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correctness of the application of Section 27(f) Third Proviso to the Tamil Nadu Government Servants Conditions of Service Act, 2016. Therefore, it is not necessary that all those candidates selected need to be impleaded as parties in the writ petitions. However, the excluded candidates filed Review Applications and some of them filed the writ petitions.

27. Mr.B.Vijay, learned counsel would contend that the doctrine of merger theory would apply in the present case. The Review Applications filed by the third party candidates were also dismissed by this Court.

28. In view of the facts and circumstances, the petitioners have not raised any acceptable ground for the purpose of reconsidering the issues already adjudicated by this Court and judgment was delivered on 27.02.2024. Further, the Review Applications filed by the third parties were dismissed on 07.03.2024. Thus, the present writ petitions are nothing but re-litigations instituted. Re-adjudication on re-litigations on the identical issues raised are impermissible. Thus, the Government shall proceed with issuance of the orders of appointment as per the Revised Provisional Selection List published pursuant to the judgment dated 27.02.2024.



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29. With these observations, the Writ Petitions stand dismissed.

Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]
31.07.2024

Svn/Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

1.The Additional Chief Secretary to Government,
The State of Tamil Nadu,
Home (Courts-I) Department,
Fort St. George, Chennai – 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Tamil Nadu Public Service Commission Road,
VOC Nagar, Chennai – 600 003.

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